

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

CASE NO. 02-19  
FOREST HILLS TREE SLOPE OVERLAY

+ + + + +

This transcript constitutes the minutes from the hearing held on Thursday, July 22, 2004.

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The Public Hearing of the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of the Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN,	Chairperson
ANTHONY J. HOOD,	Vice Chairperson
GREGORY JEFFRIES,	Member
JOHN G. PARSONS,	Member

ZONING COMMISSION STAFF PRESENT:

ALBERTO P. BASTIDA,	Secretary
SHARON SCHELLIN,	Zoning Specialist
JACOB RITTING,	Office of Zoning

OFFICE OF PLANNING STAFF PRESENT:

ELLEN MCCARTHY,	Deputy Director, (OP)
JENNIFER STEINGASSER,	Office of Planning
KAREN THOMAS,	Office of Planning

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Preliminary Matters .....	5
Office of Planning .....	8
Other Government Agencies .....	45

#### Organizations and Persons in Support

Laura Baughman .....	58
Karen Foreit .....	60
Jane Halpern .....	63
Willis Hawley .....	66
Mark Baughman .....	68
Jim Foreit .....	71
Carolyn Hawley .....	73
Warren Watts .....	75
Cindy Kelly .....	79
Margie Shanks .....	81
Robert Maudlin .....	83
Andrew Stevenson .....	85
Barbara Deutsch .....	87
Peter Halle .....	92

#### Organizations and Persons in Opposition

George Clark .....	95
Maeve Hebert .....	103
James Urban .....	111
Dorn McGrath .....	126
Barbara Simmons .....	129
Joan Banesh .....	132
James Casserly .....	133
David Swanson .....	136
Martin O'Hara .....	138

#### Advisory Neighborhood Commission ANC-3F

David Bardin .....	139
Cathy Wiss .....	142

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P-R-O-C-E-E-D-I-N-G-S

6:36 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, July 22, 2004. My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners John Parsons and Greg Jeffries.

The subject of this evening's hearing is Zoning Commission Case No. 02-19 and this is a continuation of the May 6, 2004, hearing. This application is a request by the Forest Hills Citizens Association for a text and map amendment to the District of Columbia Municipal Regulations, Title 11, Zoning to create Sections 1516 and 1517, the Forest Hills Tree and Slope Overlay District.

Notice of today's hearing was published in the D.C. Register on May 21, 2004, and copies of both the hearing announcement and the Office of Planning amended alternative text are available to you and copies are available on the table by the door. I would encourage all of you to pick one of those up.

This hearing will be conducted in accordance with the provisions of 11 DCMR, Section 3021 which is the rules of procedure for rule makings.

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1 The order of procedure will be as follows:

2  
3 Preliminary matters and, in this case  
4 because we specifically asked the Office of Planning  
5 to make an alternative proposal, the Report by the  
6 Office of Planning will go first followed by the  
7 petitioner's response, report of any other Government  
8 agencies, report of the Advisory Neighborhood  
9 Commission 3F, organizations and persons in support,  
10 and organizations and persons in opposition.

11 The following time constraints will be  
12 maintained in this hearing. The petitioner will have  
13 30 minutes, organizations will have five minutes,  
14 individuals will have three minutes. The commission  
15 intends to adhere to these time limits as strictly as  
16 possible in order to hear the case in a reasonable  
17 period of time. That means we will finish tonight.

18 The Commission reserves the right to  
19 change the time limits for presentations if necessary  
20 and notes that no time shall be exceeded. All persons  
21 appearing before the Commission are to fill out two  
22 witness cards. These cards are also located on the  
23 table near the door.

24 Upon coming forward to speak to the  
25 Commission, please give both cards to the reporter who

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1 is sitting to our right. Please be advised that this  
2 proceeding is being recorded by the court reporter but  
3 is also being webcast live. Accordingly, we ask that  
4 you refrain from making any disruptive noises or  
5 actions in the hearing room.

6 The decision of the Commission in this  
7 case must be based on the public record. To avoid any  
8 appearance to the contrary, the Commission request  
9 that persons present not engage the members of the  
10 Commission in conversation during a recess or at any  
11 other time. Staff will be available throughout the  
12 hearing to answer any procedural questions and you can  
13 direct those to Mr. Bastida or Mrs. Schellin.

14 Please turn off all beepers and cell phones at  
15 this time so as not to disrupt the hearing.

16 Now, Mr. Bastida, we will take up any  
17 preliminary matters. Do you have any preliminary  
18 matters?

19 MR. BASTIDA: Madam Chairman, the staff  
20 has one preliminary matter regarding the order that  
21 the ANC would like to be heard tonight. I would  
22 suggest that maybe the ANC can come forward and put  
23 forth the reasons why they cannot follow the regular  
24 procedures.

25 MR. BARDIN: Madam Chair and members of

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1 the Commission, I am David Bardin, one of the three  
2 commissioners designated to represent ANC-3F. We  
3 request that you schedule us to go last tonight for  
4 two reasons. Because, one, our chair, Karen Perry, is  
5 working and works late in Alexandria and cannot be  
6 here now. She is going to try to be here later. We  
7 would like her to be here for our presentation.

8 And because we are taking an in-between  
9 position. In the past we have supported the template  
10 type overlay that was set down for a hearing and in  
11 effect temporarily. Today we are not going all the  
12 way to support the Office of Planning alternative  
13 proposal but we are somewhere in between and will try  
14 without a lot of complications to explain that to you.

15 We have submitted a 10-page memorandum Wednesday and  
16 shared it with the parties explaining why so we  
17 request that you indulge us and let us go last.

18 CHAIRPERSON MITTEN: Mr. Bardin, before  
19 you leave, could we strike a deal where you would be  
20 willing to submit yourself to a time limit? As you  
21 know, we don't usually limit the time for the ANC so I  
22 would be interested in extracting that from you.

23 MR. BARDIN: I'll do better than that,  
24 Madam Chair. If we have to go in the usual order, we  
25 would probably take a long time. I don't know if

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1 you've seen it but we have written you 10 pages. What  
2 we've done is just given you what I think you have a  
3 name for but I'll say a short sheet instead of a blank  
4 H sheet with 16 points. I figure that most of them  
5 will probably be covered by people from Office of  
6 Planning, people who speak before your questions and  
7 it will cut it way down.

8 CHAIRPERSON MITTEN: How many minutes, 15?

9 MR. BARDIN: It depends on how much you  
10 cover. I doubt whether it will be 15 but I think if  
11 you do it in the usual order it will be at least an  
12 hour. I think you will be way ahead in time alone if  
13 you put us last. Frankly, if you cover everything  
14 before we get up, we'll just tell you thank you.

15 CHAIRPERSON MITTEN: Okay. It's a deal.

16 MR. BARDIN: Thank you.

17 CHAIRPERSON MITTEN: Anyone else? Mr.  
18 Clark?

19 MR. CLARK: Chair Mitten, my name is  
20 George Clark, president of the Forest Hills Citizens  
21 Association. We are the applicant, the petitioner, in  
22 this case but we are in kind of a unique position  
23 ourselves tonight. We are not here in support of the  
24 Office of Planning alternative and, therefore,  
25 everybody has been asking me do I fill out proponent

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1 or opponent when I fill out my card.

2 My answer has been opponent although we  
3 are not opposed to everything that the Office of  
4 Planning has proposed. It would seem to me to make  
5 sense that those who are favor of the Office of  
6 Planning proposal go first in the usual order and then  
7 have the Citizens Association with its 30 minutes then  
8 go afterwards.

9 CHAIRPERSON MITTEN: Okay. Sounds good.  
10 We will just rearrange everything tonight. Okay.  
11 Anything else? Office of Planning, go.

12 MS. THOMAS: Good evening, Madam Chair,  
13 members of the Commission. This is OP's report on the  
14 alternative proposal to the Forest Hills Tree  
15 Protection Overlay District which was set down by the  
16 Commission on July 23, 2003.

17 Our discussion tonight will focus on the  
18 following:

19 A brief time line as to where we are based  
20 on the Commission's directive to OP to date.

21 What OP has done thus far based on these  
22 directives with respect to the canopy approach taken  
23 in the alternate proposal.

24 An outline of the provisions as amended  
25 and what is intended by each of those provisions.

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1 Specifically, what was done in terms of  
2 research, technical aspects, and results produced as  
3 shown in the report.

4 CHAIRPERSON MITTEN: Can I ask you in the  
5 interest of time not to go through that time line just  
6 because we read your report and just get to the meat  
7 of it.

8 MS. THOMAS: Okay. On March 31st OP met  
9 with the ANC and the community concerning directives  
10 given to us to meet with them to discuss what issues  
11 they might have with the canopy approach. We met with  
12 them to present the provisions of the alternate  
13 proposal, explained the process, answered questions,  
14 and solicit input and suggestions for modifications.

15 In short, this has been a long process and  
16 we've been guided by specific goals, testimony from  
17 independent experts we have consulted and input  
18 received from all interested parties and carefully  
19 considered.

20 We sought to address the protection and  
21 expansion of the existing canopy within the proposed  
22 overlay including garden development activity through  
23 the preservation of a percentage of tree canopy on the  
24 lots with tree replacement and enforcement mechanisms  
25 involved in the coordination of DCRA and the Urban

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1 Forestry Administration.

2 Our canopy proposal suggest major elements  
3 with expanse of the tree bill approach including a  
4 tree survey with tree management plan for open  
5 forestry review required, replanting provisions with  
6 nursery stocked trees.

7 The canopy proposal submitted included a  
8 20 percent tree canopy coverage for lots less than  
9 9,500 square feet all the way to 40 percent for lots  
10 20,000 square feet or greater. A tree canopy is  
11 measured by the approximate circumference of the drip  
12 line and that graphic just shows what it is we are  
13 looking at when we discuss tree canopy.

14 Also included in the provisions are a tree  
15 management plan showing the existing and proposed  
16 canopy coverage on a lot which is required when a  
17 building permit application is filed and this TMP must  
18 be produced by a certified arborist and reviewed and  
19 approved by the Urban Forestry Administration before  
20 permit issuance.

21 Enforcement mechanisms also exist in the  
22 provisions where no action on a building permit  
23 without UFA's report would take place and no building  
24 permit would be issued if the tree protection report  
25 shows that the tree canopy requirements will not be

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1 met.

2 Special exception relief can be granted --  
3 relief can be granted through the special exception  
4 process whereby it would look at overcrowding of  
5 trees, lack of adequate roof space, or any other  
6 factors and those enforced by the Board to ensure the  
7 requirements of the section.

8 Tree bill regulations also would be  
9 enforced in the overlay since it protects special  
10 trees over 55 inches in circumference. We looked at  
11 literature received from various research institutions  
12 including University of California at Davis,  
13 University of Maryland. We contacted local  
14 jurisdictions including Fairfax County, City of  
15 Fairfax, Alexandria, Chevy Chase, and we looked at  
16 Takoma Park ordinances.

17 Research and canopy assessment looked at  
18 four methods using aerial photos. These include  
19 visual estimation, the line intercept or transect  
20 methods, dot grid, and digital image analysis. Our  
21 GIS team was instrumental in producing a digital image  
22 analysis based on June 2003 aerial photos. These  
23 digital images created polygons within squares of the  
24 defined study area.

25 The polygons represented a tree canopy

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1 within these squares and the GIS program used these  
2 polygons to determine total area and percent canopy  
3 cover. Specifically, using GIS software the aerial  
4 photos of the study area taken in June were overlaid  
5 with property boundary plans from the Office of Tax  
6 and Revenue maps.

7 The tree canopy outlines are then traced  
8 on the screen at a scale of approximately 1 in 700  
9 where one inch equals approximately 60 feet on the  
10 ground. Tree locations were determined from center  
11 points of the canopies and trees that were located  
12 outside of private property boundaries were not traced  
13 even if part of their canopies fell within the  
14 property boundary.

15 Once a canopy was traced the total area of  
16 the private property in the study area was divided by  
17 the total area of trace canopy to determine the  
18 percent canopy. For example, polygons in this square  
19 -- I don't know if you can see -- would not represent  
20 a single tree but a canopy provided by trees which may  
21 or may not overlap in some instances.

22 Similarly, this square has canopy which is  
23 mapped by approximately 11 polygons and not 11 trees.

24 The entire data set produce a canopy  
25 coverage for the area of approximately 55 percent and

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1 this did not include street trees or alley trees or  
2 trees on public space. To assign a percentage to the  
3 character of Forest Hills, we looked at the privately  
4 owned developed R-1-A lots.

5 OP believes that this represents the  
6 character of Forest Hills for privately owned  
7 developed properties greater than 7,500 square feet  
8 and it is representative of the median lot size of  
9 9,500 square feet as previously determined in our  
10 earlier reports.

11 If any of the larger lots in the overlay  
12 were to be subdivided and developed, no less than this  
13 percentage is what should be maintained on each  
14 privately developed homeowner lot in the R-1-A zone to  
15 retain the character of Forest Hills as it exist today  
16 and for the future.

17 So we took this information to the ANC  
18 meeting and we solicited comments and questions they  
19 had on the canopy proposal presented earlier to the  
20 Commission. That information was submitted as part of  
21 our report today.

22 Briefly, they included questions and  
23 comments regarding how the alternate proposal  
24 addresses or would address the need for a tree plan  
25 for minor home repairs as opposed to major homeowner

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1 additions, control of subdivision, a solution to clear  
2 cutting, enforcement of shade trees and a list of  
3 replacement trees.

4 Examining these we either made  
5 recommendations for amendments to the alternate or  
6 referred to advice to OP by the Attorney General's  
7 Office where it was determined that the zoning  
8 regulations were not the appropriate mechanism for  
9 relief or solution.

10 OP believes, as the community correctly  
11 pointed out, that regulations should reflect a balance  
12 of the concerns of some that small projects wouldn't  
13 fairly trigger the need for a tree plan and canopy  
14 coverage with the concerns of others that other  
15 projects would escape the overlay coverage provisions.

16 We, therefore, recommend an amendment to  
17 the change of the language of Section 1517.2 to  
18 reflect that the applicants for the building permits  
19 that are not buildings would need to meet the  
20 requirements of the overlay if those projects had an  
21 impact on coverage within the overlay. I would  
22 rely on our report to explain the other parts of it.

23 I'll just go through the amendments.  
24 1517.2. This provision seeks to preserve trees by  
25 requiring a minimum tree canopy coverage for lots in

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1 the overlay. The number and size of trees required is  
2 determined by the percentage canopy of the trees at  
3 10-year growth equal to 25 percent of the lot area for  
4 lots less than or equal to 7,500 square feet or 36  
5 percent for lots greater than 7,500 square feet.

6 This provides flexibility in tree planting  
7 and preservation requirements since the requirements  
8 can be met by preserving existing trees or planting a  
9 combination of new trees that will meet the coverage  
10 goal. How does this help expansion of canopy? The  
11 recommendation for planting states that a canopy  
12 coverage must be equivalent to what exist today in  
13 mature trees.

14 In ten years if replanted, therefore, as a  
15 tree continues to grow beyond 10 years, then the  
16 canopy increases and the overall canopy of the area or  
17 the square would increase. How does this preserve  
18 mature trees? There is a disincentive to cut down a  
19 mature tree sine it would take more trees to replant  
20 which a homeowner may or may not have the necessary  
21 space to do. To meet the large requirement it would  
22 make more sense to retain mature trees than plant  
23 several younger trees to meet a 10-year canopy  
24 requirement.

25 In 1517.3 we believe this provides the

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1 criteria for evaluation of the request to reduce tree  
2 canopy coverage. 1517.4 would ensure that nursery  
3 stocked trees are planted and these are quality trees  
4 as defined by the American Nursery Stock Standards.

5 1517.5 provision would require tree protection plan  
6 which would be essential for site evaluation and the  
7 requirements are comparable to other jurisdictions.

8 OP has DCRA's support in the review of  
9 applications from the Forest Hills Overlay District.  
10 1517.7 through 1517.11 are the enforcement mechanisms  
11 that would take place with DCRA's and UFA's  
12 cooperation.

13 What does our proposal to? In comparison  
14 to our original proposal, this recommendation provides  
15 flexibility in tree planting and preservation  
16 requirements creating an easily enforceable mechanism  
17 that incorporates Urban Forestry Administration's  
18 review and reduces the impact on the buildable area of  
19 lots and maintains a character canopy coverage for  
20 Forest Hills.

21 In addition, we believe that a canopy  
22 requirement gives a tree value. The canopy now  
23 becomes an asset in meeting a lot requirement. Also,  
24 a homeowner would have to consider the cost of  
25 removing a healthy mature tree which would provide the

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1 necessary canopy as opposed to replanting and  
2 maintaining younger trees.

3 We believe that this approach has been  
4 studied in various jurisdictions and has been applied  
5 over a sufficiently long period to merit further  
6 review and assessment. Thank you.

7 CHAIRPERSON MITTEN: Thank you, Ms.  
8 Thomas.

9 Questions for the Office of Planning? Go  
10 ahead, Mr. Parsons.

11 MR. PARSONS: I've got a number of  
12 questions because I'm thoroughly confused. Not  
13 because of your presentation but because of what's  
14 going on about this. As I understand it, you can  
15 bring forward a plan by a certified arborist and  
16 essentially remove most of the trees on the property  
17 if you can plant trees that will reach a canopy of a  
18 certain size within 10 years. Is that correct?

19 MS. THOMAS: Well, first of all, you can't  
20 remove the trees as yet. It has to be tied to a  
21 building permit process.

22 MR. PARSONS: I understand that but, I  
23 mean, most of the trees could be removed as long as  
24 they could guarantee that they would reach a certain  
25 canopy in a period of 10 years.

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1 MS. THOMAS: You wouldn't be able to  
2 remove all the trees on your lot. You would have to  
3 meet the canopy requirement for the lot.

4 MR. PARSONS: Within 10 years.

5 MS. THOMAS: Within 10 years.

6 MR. PARSONS: So if you brought in big  
7 enough trees to replace everything you cut down,  
8 presumably within 10 years if they lived, you would  
9 meet the requirements.

10 MS. THOMAS: That's correct.

11 MR. PARSONS: And apparently you have to  
12 file a report with somebody every three years to  
13 report on the health of those trees.

14 MS. THOMAS: Once after three years, not  
15 every three years.

16 MR. PARSONS: Right. So if the tree  
17 canopy isn't doing well, the only punishment or result  
18 of that is you can't get anymore building permits. Is  
19 that right?

20 MS. THOMAS: That's correct.

21 MR. PARSONS: In other words, there's no  
22 removal of certificate of occupancy that you've got to  
23 move out of the house because your canopy didn't make  
24 it.

25 MS. THOMAS: No, we don't have C of Os in

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1 the District for private --

2  
3 MR. PARSONS: That seems very problematic  
4 to me that somebody could achieve what they want to  
5 achieve and not achieve what we want to achieve in the  
6 10-year period. I'm having a great deal of trouble  
7 with that. I don't understand how that works and  
8 maybe others -- maybe that will evolve over the  
9 hearing process.

10 It's not clear to me -- I'm going to  
11 another point. It's not clear to me why you've  
12 reduced from 95 -- recommending reducing from 9,500  
13 square feet to 7,500 square feet.

14 MS. STEINGASSER: Well, Commissioner  
15 Parsons, we're not recommending a reduction. That is  
16 the by-right zoning that exist.

17 MR. PARSONS: But we advertised 9,500  
18 square feet.

19 MS. STEINGASSER: Under the original tree  
20 slope. Under this proposal we're proposing that we  
21 maintain the existing zoning without modifications to  
22 the area required.

23 MR. PARSONS: And why is that?

24 MS. STEINGASSER: Because we feel it  
25 allows -- it focuses on the preservation of the tree

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1 canopy as opposed to using trees as a building  
2 control. It allows for that flexibility for the  
3 homeowner to use their property as they would by right  
4 and still maintain their canopy.

5 MR. PARSONS: And your sense is that is  
6 supported by the community or was this a response to  
7 the community's input?

8 MS. STEINGASSER: I would say on this  
9 issue there is no "the community." I think there are  
10 people that oppose the original recommendation that  
11 find this to be an acceptable compromise, yes. I  
12 think many of their letters are in the file and they  
13 will be speaking this evening. I do think it has  
14 bridged some compromise. It has not bridged the full  
15 compromise that we all were hoping for.

16 If I could just take a second and  
17 introduce to our left, this is Ainsley Caldwell, our  
18 Urban Forester from the Department of Transportation  
19 who has come and he is also available to talk about  
20 some of the issues here, how Urban Forestry will  
21 interact with this process, the list of trees issue  
22 and that kind of thing. We kind of skipped through  
23 the introductions.

24 MR. PARSONS: Okay. How big is your  
25 staff? I'm kidding. I'm kidding. It seems like a

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1 pretty good workload we are developing for you here.  
2 You don't need to comment on that. I'm sorry.

3 On of my favorite aspects of the previous  
4 proposal, which some of my colleagues had trouble  
5 with, was the issue of pervious and impervious  
6 surface. That is, we were trying to retain a 50  
7 percent occupation of impervious roofs, driveways,  
8 terraces, swimming pools, and so forth. That has  
9 dropped away from this proposal and why is that?

10 MS. STEINGASSER: It's the same issue as  
11 the minimum lot occupancy. We did not put anymore --  
12 any additional development restrictions on the site.  
13 We focused on the tree canopy. Whatever maintained  
14 that healthy tree canopy was what we were focusing on  
15 and less on restricting the lot development.

16 MR. PARSONS: Okay. Let's go to the issue  
17 of --

18 MS. THOMAS: Could I add to that as well?

19 MR. PARSONS: Sure,

20 MS. THOMAS: Impervious coverage is not  
21 best coverage in regulations since the Department of  
22 Health controls somewhat the management and that is a  
23 stonewater management issue. Department of Health  
24 currently is undergoing changes to the code and it is  
25 part of a building permit review process as well

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1       whereby they are looking at sort of a rehaul of the  
2       regulations regarding impervious surface areas.

3               We did not want to codify something into  
4       regulations that would sort of eventually conflict  
5       with DOH's code review process which ultimately takes  
6       place once you disturb property. Disturbs soil.

7               MS. MCCARTHY: I think I should add, Mr.  
8       Parsons, kind of as a backdrop to a number of your  
9       concerns about why did we drop out a lot of the  
10      provisions that regulated buildings as opposed to  
11      trees. What we discovered with regard to the tree and  
12      slope overlay in Forest Hills that was different than  
13      the tree and slope overlay in Woodland-Normanstone and  
14      Chain Bridge Road University Terrace was that there  
15      was considerably more development opportunity in  
16      Forest Hills.

17              That's a good thing and a bad thing but it  
18      was in terms of the private property rights that were  
19      affected in Forest Hills, the input that we received  
20      from the community which was substantially more  
21      divided, as you know, than the community had been in  
22      either of the other two jurisdictions in which tree  
23      and slope had been applied.

24              As we sat back and pondered why are we  
25      getting so much opposition in Forest Hills where we

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1 didn't in Chain Bridge Road and Woodland-Normanstone,  
2 it appeared that part of it was because of a greater  
3 possibility of subdivision, more developable lots than  
4 had been the case in either of those other two  
5 jurisdictions because of the configuration of those  
6 lots, because of the slopes of those lots, because of  
7 where roads are in Woodland-Normanstone and Chain  
8 Bridge Road University Terrace that is different from  
9 Forest Hills which is more -- those are more kind of  
10 almost wild sites as opposed to this which is more of  
11 a subdivided area already.

12 We had cautioned the original petitioners  
13 when they came to say, "In any of these overlays these  
14 provisions can be very restrictive of private property  
15 rights. You need to be sure that you have a very high  
16 degree of consensus before you come in with something  
17 that is going to really restrict somebody's ability to  
18 subdivide their property if that is what they were  
19 counting on doing.

20 That was certainly the impression that we  
21 had gotten from the comments received at those early  
22 hearings so we tried to come up with an approach that  
23 put the major emphasis on protecting trees because  
24 that was what we all agreed we really needed to do.

25 That was what everybody could agree upon,

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1 opponents and proponents in the Forest Hills, that  
2 they wanted to see the forest protected so we chose a  
3 percentage that was going to keep the percentage of  
4 trees at approximately the same level of canopy that  
5 we have now in Forest Hills.

6 If one assumes that people are just  
7 looking for the opportunity to cut down their trees,  
8 the tree and slope overlay has a lot of drawbacks  
9 including the ability that you could cut down a big  
10 tree every year as long as it wasn't 75 inches or  
11 above.

12 You could gradually denude your property  
13 essentially of all trees because of the way those  
14 provisions work as some of the opponents pointed out.

15 The advantage of the canopy approach is you've got to  
16 keep that canopy. Yes, after you pass your three-year  
17 inspection might you deliberately starve a tree or do  
18 whatever you can to get rid of it?

19 Yes, but as somebody cogently pointed out,  
20 people still steal but you have laws against stealing.

21 We can put the laws in place. We can put the  
22 regulations in place. We can do the best we can to  
23 enforce them.

24 We can never guarantee precisely that they  
25 are going to be enforced but we thought this approach

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1 had a lot of advantages in terms of flexibility,  
2 wasn't as intrusive on private property rights, but  
3 still focused on keeping the canopy at the same level  
4 that it is now. We thought that was the advantage of  
5 this approach.

6 MR. PARSONS: Okay, that's very helpful.  
7 So then you would not recommend the canopy approach  
8 everywhere in the city. I mean, we're not going to  
9 unravel existing tree and slope overlays in a more  
10 wild circumstance, as you put it, that we are going to  
11 customize each one of these as we do with other  
12 overlay districts in historic areas and so forth. We  
13 are responding to that situation. I'm not saying  
14 canopies is the way to do business throughout the  
15 city.

16 MS. MCCARTHY: At this point I think the  
17 Commission could think of this as this is a pilot for  
18 another approach. It is one that seems better  
19 tailored to the unique characteristics of Forest  
20 Hills. We're not proposing doing away with the other  
21 two tree and slope overlays and if other neighborhoods  
22 come to us, we could consider these as two different  
23 approaches and look to see which one makes the most  
24 sense. We are definitely not proposing that we go  
25 back and revisit Chain Bridge Road and Woodland-

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1 Normanstone.

2 MR. PARSONS: Okay. Thank you. Now, the  
3 exhibit that you put up, Ms. McCarthy, which I guess  
4 was a blow-up, if you will, of what was on the screen.

5 MS. McCARTHY: Yeah. It may not have been  
6 the exact slide on the screen but I just put it up  
7 because what was on the screen wasn't showing very  
8 well what these polygons that we were talking about  
9 looked like.

10 This one has a little better color  
11 contrast so you can see, for example, the large  
12 polygon/blob to your upper left there actually consist  
13 of a number of individual trees which, I believe, the  
14 Commission can see even from there, but it's one  
15 polygon and that is how -- it's not so much the  
16 details of it that is important but just to show you  
17 this is how the GIS system analyzes and this is how we  
18 were able to come up with the conclusion that if you  
19 take out the street trees and the Nation Park Service  
20 lands and you just look at the section of Forest Hills  
21 which is the R-1-A, the residential area of Forest  
22 Hills, the canopy is about 36 percent of the total  
23 land area of that private property.

24 There were a number of different methods  
25 we could use. This was the one that worked the best

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1 with our GIS system.

2 MR. PARSONS: All right. Without pointing  
3 to a specific property, I assume the greener trees and  
4 the gray or the black and white photograph represents  
5 grass or shrubbery or whatever. Is that correct?

6 MS. MCCARTHY: I believe so.

7 MR. PARSONS: So that represents the  
8 canopy on an individual lot as seen from a satellite  
9 or whatever. Right?

10 CHAIRPERSON MITTEN: If you are going to  
11 speak, you need a mike.

12 MR. PARSONS: This exhibit is the tool to  
13 be used to determine canopy on an individual lot?

14 MS. MCCARTHY: No. This was the  
15 methodology that we used to determine what was the  
16 appropriate percentage to use when we set that for  
17 individual lots. In terms of each individual lot, it  
18 will be the certified arborist doing the tree survey,  
19 calculating what the canopy will be from what is  
20 proposed to remain based on the standard numbers that  
21 arborists use on type of tree and how big its canopy  
22 will be in 10 years.

23 MR. PARSONS: So GIS is simply a tool at  
24 this point to illustrate the basis of your  
25 recommendation, not to be used as a tool to develop a

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1 tree canopy?

2 MS. MCCARTHY: Right. We wanted you to  
3 know that 36 percent or the 20, 25, and 40 percent  
4 that we translated that into we didn't just reach into  
5 the air and pull that out of thin air. We actually  
6 did analyze the forest in Forest Hills and said if we  
7 want to keep that at the level that it is now, that is  
8 the percentage that we need to assign to the various  
9 sites.

10 MR. PARSONS: All right then. I think  
11 this exhibit is helpful because it shows trees are not  
12 always circular. That is, many of them are ameba like  
13 I'll say.

14 MS. MCCARTHY: Several of those ameba-like  
15 shapes are because you have two circulars or just  
16 about circulars that are right next to each other.

17 MR. PARSONS: Right. So I'm wondering how  
18 the arborist is really going to determine what the  
19 canopy is and how that process would evolve. How do  
20 you imagine that happening? Ah ha, the answer.

21 MR. CALDWELL: Basically what is done is  
22 you measure the span of the canopy and from that you  
23 determine the square footage and using that number  
24 compare to the total square footage of the lot.

25 MR. PARSONS: Would you start with a

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1 diameter of the tree and say an average tree of this  
2 size has a canopy of so many square feet or would you  
3 start tracing around on the ground?

4 MR. CALDWELL: No, you would follow the  
5 drip line basically getting the diameter but following  
6 the farthest spreading branch to get the diameter so  
7 you can calculate the area. Then you have the area  
8 that is occupied in terms of canopy by that tree.  
9 Then you add those add together and compare that or  
10 calculate what percentage is covered by the entire  
11 lot.

12 MR. PARSONS: So how would you physically  
13 locate the drip line? Would you do it with a laser  
14 device?

15 MR. CALDWELL: No, sir. Basically you go  
16 to the most extreme branch location.

17 MR. PARSONS: You look up 60 feet and you  
18 say --

19 MR. CALDWELL: Yes.

20 MR. PARSONS: And you spray the ground.

21 MR. CALDWELL: No. Basically you have a  
22 tape measure and you would have one person located at  
23 the trunk of a tree and you go out to the edge of the  
24 canopy. You look up and it's 60 feet, or 50 feet as  
25 the case may be. That measurement would be the

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1 radius. You multiply by two and you now have the  
2 diameter. Using that or the radius you calculate the  
3 area that is covered by the canopy.

4 MR. PARSONS: And you feel confident that  
5 if this is done by a licensed arborist, the result  
6 will always be the same? In other words, it's not  
7 subjective, it's precise.

8 MR. CALDWELL: There will be variation but  
9 within five percent. You have to bear in mind that a  
10 canopy is irregular so, for example, an arborist may  
11 go east/west but the variation shouldn't be more than  
12 five percent.

13 MR. PARSONS: Well, five percent could be  
14 considerable with a big tree, couldn't it?

15 MR. CALDWELL: Well, five percent of 25  
16 feet. We're talking about diameter, or the radius as  
17 the case may be.

18 MR. PARSONS: The diameter of the canopy?

19 MR. CALDWELL: Yes.

20 MR. PARSONS: A licensed arborist comes in  
21 and presents you a plan. You're not going to send  
22 your staff out there or yourself to go remeasure this,  
23 are you?

24 MR. CALDWELL: It depends on what are the  
25 requirements. If there is a 20 percent or 25 percent

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1 requirement and the arborist provides the plan showing  
2 X number of trees, here are the diameters and the  
3 calculations, we just verify that information. If  
4 there is any uncertainty, of course, we will do a site  
5 visit to confirm what is there.

6 MR. PARSONS: Okay. Thank you.

7 CHAIRPERSON MITTEN: I just want to  
8 follow-up on what you were discussing. I think what  
9 we are going for is the uniformity of approach and a  
10 consistency with little opportunity for manipulation  
11 so everyone knows exactly what is expected. In terms  
12 of measurement, we're trying to establish that the  
13 measurement would be done consistently by different  
14 people reading the language of 1517.2.

15 What I'm wondering about is what kind of  
16 standardized material is out in your world about how  
17 fast trees grow because how does one project and with  
18 what degree of uniformity does one project tree growth  
19 in order to establish that the canopy would be  
20 restored after 10 years to a certain level.

21 MR. CALDWELL: There's lot of literature  
22 about growth rate.

23 CHAIRPERSON MITTEN: It's standardized, I  
24 guess. There's the Bible of Tree Growth According to  
25 Somebody.

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1 MR. CALDWELL: There are certain  
2 publications. Hishu, for example, has a manual which  
3 will give information as to the species, the expected  
4 span in terms of the canopy at various ages. I will  
5 point out that various factors will affect the growth  
6 rate but you can project 10 years down the line you  
7 should get 25 feet or 30 feet span.

8 CHAIRPERSON MITTEN: Is there some way or  
9 something that we should say, for instance, that the  
10 reference should be to a particular publication, that  
11 the assumption should be made that the climate is the  
12 following? Is there some way for us to standardize  
13 the way that these estimates will be made?

14 MR. CALDWELL: In terms of publication,  
15 yes, with regard to the foundation. For example, if  
16 you have an area where you are fertilizing your lawn  
17 and, thereby, the roots are getting that extra  
18 nutrient, your growth rate will be much, much  
19 different from an area where you are not fertilizing  
20 your lawn or where extra nutrient is not available.  
21 Yes, you can reference to one or two publications. I  
22 can provide the Office of Planning with that -- with  
23 those reference.

24 CHAIRPERSON MITTEN: Do you think that --  
25 I mean, I don't want to ask Mr. Parsons because this

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1 is his area of expertise. I mean, would that help?

2 MR. PARSONS: OP's report refers to a list  
3 of trees deemed suitable for the District of Columbia  
4 but that list isn't attached so is that a list that  
5 is --

6 MR. CALDWELL: That list is on our  
7 website, Urban Forestry Administration Website. I  
8 have a copy here. I wasn't asked to provide extra  
9 copies but I just brought a copy for my friends that I  
10 can leave with the Office of Planning and they  
11 can --

12 MR. PARSONS: Is this list basically  
13 street trees?

14 MR. CALDWELL: It's a recommended street  
15 tree list but many of the qualities that we use in  
16 selecting trees for this list are on private property.  
17 We looked at qualities, for example, the high  
18 temperatures, trees that would survive under adverse  
19 urban environment. I am pretty sure you are aware of  
20 the heat affect in urban environments. It's a little  
21 bit warmer than in the suburbs and the rural areas.  
22 These are some of the considerations we are taking in  
23 selecting trees for our list.

24 Also, we made sure that we did not include  
25 exotic invasive species which are species which are

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1 not native and also can be problematic. For example,  
2 Norway Maple, Atlantis among others.

3 MR. PARSONS: Well, how about trees that  
4 may not be welcome on a street tree environment that  
5 would be welcome in somebody's yard?

6 MR. CALDWELL: This is a dynamic list. It  
7 keeps on changing as we see appropriate species. This  
8 is not the final word so to speak.

9 MR. PARSONS: So maybe you could have a  
10 specialized list for this application that wasn't  
11 restricted to just street trees.

12 MR. CALDWELL: Sure. Sure. I would be  
13 willing to work with the Office of Planning.

14 MR. PARSONS: Probably American Beech is  
15 not on your list of street trees, for instance.

16 MR. CALDWELL: Well --

17 MR. PARSONS: It would be perfectly  
18 applicable here in this circumstance.

19 MR. CALDWELL: I am not sure if you are  
20 aware of one of the problems or interesting natures of  
21 the American Beech in that it tends to sucker quite a  
22 bit and you would have your central or main tree and  
23 within a few years you will have a radius of maybe  
24 five or six or seven sprouts around.

25 MR. PARSONS: I knew I shouldn't have

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1 picked a species but I'm just trying to say that if  
2 you've got a street tree list, there are certainly  
3 other trees that could be used in an environment like  
4 this that you wouldn't be worried about the nuisance  
5 value that you wouldn't want in a street environment.

6 MR. CALDWELL: Sure. And, you know, we  
7 review whatever is recommended, show the pros and  
8 cons, work along with the Office of Planning and  
9 develop another list.

10 MR. PARSONS: So it's possible we could  
11 have a list to accompany this that wasn't the street  
12 tree list?

13 MR. CALDWELL: Sure.

14 MR. PARSONS: Okay. But you will submit  
15 your street tree list that you have with you tonight  
16 because we mentioned it and we ought to have it in the  
17 record. Thank you.

18 CHAIRPERSON MITTEN: Anyone else? Mr.  
19 Hood?

20 VICE CHAIR HOOD: I just have a few  
21 questions. In 1517.3 what was advertised, it says, "A  
22 percentage of 1517.2 may be reduced for a particular  
23 lot by the Board of Zoning Adjustment to award one or  
24 more of the following." I'm putting myself in the  
25 position if I'm sitting on the Board knowing that I'm

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1 not the subject matter expert.

2 For example, let me just take planting in  
3 unsuitable soil type. You have an applicant saying  
4 this is unsuitable. Then you have -- maybe I'm  
5 misinterpreting how this is even supposed to be dealt  
6 with. You have an applicant coming down trying to get  
7 that special exception and saying, "This is unsuitable  
8 so this is why I need this relief."

9 Then you have someone else maybe in  
10 opposition who doesn't want them to maybe do away with  
11 the tree coming down. How is that going to be  
12 determined? I don't know who is going to be on the  
13 Board but maybe at that time you may have a subject  
14 matter expert, but at this point who is going to be  
15 able to resolve that issue?

16 MS. THOMAS: Mr. Hood, just as a point of  
17 correction, as part of our amendment are we going to  
18 take that phrase out about unsuitable so it's based  
19 on --

20 VICE CHAIR HOOD: So I need to go to  
21 planting in areas with a lack of adequate roof space.

22 MS. THOMAS: Yes.

23 VICE CHAIR HOOD: Here's another question.  
24 I'm glad we went there.

25 MS. MCCARTHY: Essentially what we were

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1 talking about was just like, say, it's a private  
2 school case and we know and the Board and all of us  
3 would know that traffic is potentially an issue so we  
4 would make sure to refer it to DDOT.

5 All of these cases that would be alleging,  
6 "Oh, you've got to let me go under my 20 percent  
7 canopy because this situation or that one would cause  
8 a root problem," or whatever problem people would  
9 allege would keep them from being able to meet their  
10 canopy, that application would refer to the Urban  
11 Forestry Administration. They would submit a report  
12 to the Board either as part of ours or as a separate  
13 report and that would give you the subject matter  
14 expert information to act on.

15 VICE CHAIR HOOD: Okay. I'm sorry, I  
16 forgot your name.

17 MR. CALDWELL: Mr. Ainsley Caldwell.

18 VICE CHAIR HOOD: Mr. Ainsley?

19 MR. CALDWELL: Caldwell.

20 VICE CHAIR HOOD: Mr. Caldwell? Oh, I'm  
21 sorry. Mr. Caldwell, let me ask you a question. This  
22 root space issue, for example, some years back I was  
23 informed by arborists that you may do some damage to a  
24 tree and not know it for five years. Maybe the Office  
25 of Planning or whoever can answer this. Is that

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1 encompassed in this language here in 1517.3(b)? What  
2 relief do I have five years from now if damage is  
3 done?

4 MS. MCCARTHY: Well, that is what we would  
5 assume to be covered under tree protection practice  
6 during construction. I suspect we probably evolve a  
7 standardized set of conditions that the Board could  
8 impose that had the kind of protection about not  
9 impacting the soil, not being able to park bulldozers  
10 within a certain distance.

11 MR. CALDWELL: We have a list of  
12 requirements for construction in and around trees and  
13 it involves the distance you should be parking  
14 vehicles operating equipment, loading and unloading  
15 materials. Those guidelines already exist.

16 VICE CHAIR HOOD: Okay. If I remember  
17 correctly, we've had a number of versions and we went  
18 back and forth with this. One of my former colleagues  
19 had mentioned, and I'm not sure whether it was a  
20 hearing or deliberation on this, that we should look  
21 at it over all the city.

22 I know we're talking about Forest Hills  
23 but this could be applicable maybe in another ward or  
24 somewhere else in the city. That question may sound  
25 -- it actually sounds far-fetched to me but that was

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1 the route I thought we were going to come up with a  
2 standard like a template. Can this also be applied in  
3 other places in the city?

4 MS. MCCARTHY: That's what I was trying to  
5 explain in answer to Mr. Parson's questions but I  
6 don't think I was entirely clear that this gives us an  
7 alternative approach now so it will give us two things  
8 to choose from if a community comes to us. One of the  
9 things we've been concerned about is that the original  
10 tree and slope overlay was designed for places that  
11 were specifically restricted to locations immediately  
12 adjacent to a national park with steep slopes, large  
13 amounts of developable land.

14 I forget the rest of the characteristics  
15 that had to -- these are the situations that had to  
16 characterize the neighborhood before it was even  
17 considered to be suitable for the tree and slope  
18 overlay.

19 The canopy approach may be one that as we  
20 looked at new neighborhoods that might want a tree and  
21 slope overlay we might find that to be more suitable  
22 to neighborhoods that don't meet all the  
23 characteristics of the neighborhoods to which the  
24 original tree and slope overlay is applied to. Or we  
25 may find ourselves needing to come up with yet another

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1 hybrid to be responsive to what really works for that  
2 neighborhood.

3 VICE CHAIR HOOD: Okay. My last question  
4 and I think this has been taken out because I didn't  
5 see it. 1517.12, that's now been removed and it just  
6 says, "The issuance of a tree removal." It's still  
7 there?

8 MS. STEINGASSER: I believe, Commissioner  
9 Hood, it was 1517.2, Subsection C that we were advised  
10 by the Office of the Attorney General to remove.

11 VICE CHAIR HOOD: Okay. Let me ask you  
12 this. It's good that you can't see back here. I'm  
13 very confused. It's very good you can't see it.  
14 Could you explain that to me? I believe the issuance  
15 of a tree removal by the Department of Transportation  
16 Urban Forestry Administration does not relieve any  
17 person from meeting the requirements of the section.

18 MS. STEINGASSER: The purpose of that  
19 section was just to make it clear that there are two  
20 processes out there for tree removal and that getting  
21 a legitimate tree removal permit does not exempt you  
22 from the overlay provisions. These provisions still  
23 apply and when someone comes forward for a building  
24 permit, they will still be expected to go through the  
25 process, provide the tree management plan, and the

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1 canopy coverage.

2 VICE CHAIR HOOD: I sure hope they're not  
3 like me. I would probably have done away with the  
4 tree. Anyway, I just wanted to make sure. Hopefully  
5 that's clear to those who understand because --

6 MS. STEINGASSER: It's because the tree  
7 bill applies to every neighborhood in the city and you  
8 can go get your permit. The fact that you go get your  
9 permit under the tree bill if you also happen to be in  
10 Forest Hills, that doesn't mean that you don't have to  
11 go through this process. You'd still have to go  
12 through this process.

13 VICE CHAIR HOOD: Should we say that or is  
14 that a given?

15 MS. STEINGASSER: If you want to craft  
16 that language more specifically so that you think it's  
17 clear to somebody that would read it, that's fine  
18 because that's what we're trying to get at, is just  
19 make sure that people understand that just because  
20 they have gone through the provisions of the tree bill  
21 and they get a permit from the Urban Forester, if they  
22 happen to be in Forest Hills, that doesn't relieve  
23 them of any responsibility of still following the tree  
24 and slope overlay.

25 VICE CHAIR HOOD: The Chair just mentioned

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1 to me that's what it's saying so I guess I need to  
2 keep reading. Thank you, Madam Chair.

3 CHAIRPERSON MITTEN: Mr. Jeffries, did you  
4 have any questions?

5 MR. JEFFRIES: No.

6 CHAIRPERSON MITTEN: Okay. Thank you.

7 MS. STEINGASSER: If I may, Madam Chair, I  
8 would just like to add to the record we were advised  
9 this morning, or yesterday afternoon, that the  
10 American Forest Organization issued a letter in  
11 opposition to our report and we would just like to  
12 respond since they are not here that we were for the  
13 record a little surprised by the letter from them.

14 They had not contacted us about our report  
15 and, to the contrary, we had contacted them and they  
16 advised us on the record that they -- okay. They  
17 said, if I may read into the record as a rebuttal to  
18 this letter since we don't really have an option, "It  
19 has been a couple of months since you wrote American  
20 Forest about D.C. plan to use tree cover as one of the  
21 parameters for building.

22 Sorry my response has taken so long. We  
23 support the approach you are taking but do not engage  
24 in local politics. We feel you and the people from  
25 the local community will be better at that issue. I

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1 did testify when the tree bill was up for discussion  
2 but that is about as far as we can go.

3 We can help with the target schools,  
4 techniques, etc., but don't have the capacity to join  
5 in the local political process. With that said, I  
6 think you are on the right track with the legislation.

7 Measuring the tree cover is the right way to go and  
8 the percentage tree cover for the various areas listed  
9 in your e-mail all seem in line with our general  
10 recommendation of 35 to 40 percent tree cover over  
11 all." It then goes into some comments about the ISA  
12 certified landscape issues. We felt it was important  
13 to read that into the record because --

14 MS. THOMAS: April 19.

15 MS. STEINGASSER: This was April 19. The  
16 letter that we then received yesterday from the same  
17 individual takes a completely opposite position.  
18 Since we didn't have an opportunity to talk to Mr.  
19 Voll, the author of the letter, we just felt it  
20 necessary to put our information on the record as  
21 well.

22 MS. THOMAS: We would be happy to give you  
23 the e-mail as part of the record.

24 CHAIRPERSON MITTEN: That would be  
25 helpful. I'm just scanning this because this was in

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1 the packet of materials that I got tonight but it  
2 looks like the primary opposition that they have is  
3 just the percentages, not the approach.

4 MS. STEINGASSER: That's correct. That's  
5 correct. Part of our -- like I said, we're confused  
6 since their original response to us was that 35 to 40  
7 was the right response -- right target area. We  
8 believe had we been able to have a conversation with  
9 them, we would find that they are including a great  
10 deal of the street trees that are in public space and  
11 cannot be covered in the zoning regs, as well as  
12 federal property that is not subject to the zoning  
13 regulations.

14 CHAIRPERSON MITTEN: Okay.

15 Mr. Caldwell, did you have any statement  
16 that you wanted to make or were you just here to  
17 answer questions for us?

18 MR. CALDWELL: I'm basically here just to  
19 lend a sister agency support. I have been consulted  
20 to provide professional opinion and I have worked on  
21 this as requested. I have given my best professional  
22 judgment and this is our position with regards to  
23 Urban Forestry Administration. If this goes forward,  
24 we will support this proposal.

25 MS. MCCARTHY: Madam Chair, we were

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1 probably remiss because we should have begun by  
2 thanking Mr. Caldwell and the Urban Forestry  
3 Administration because they have been enormously  
4 helpful to us in this process. It has been great  
5 after so many years of the District not having good  
6 expertise within the District on trees, it's been  
7 really great to be able to rely on the Urban Forestry  
8 Administration and we have been very grateful for  
9 their support.

10 CHAIRPERSON MITTEN: Thank you. All  
11 right. Then we'll move next to reports of any other  
12 Government agencies and I see Mr. Murphy from the Park  
13 Service here. Is there anyone else from a Government  
14 agency that would like to testify? All right.

15 Mr. Murphy.

16 MR. MURPHY: Good evening, Madam Chairman,  
17 and members of the Commission. My name is David  
18 Murphy and I speak for the National Park Service,  
19 National Capital Region, concerning the matter of  
20 Forest Hills Tree and Slope Overlay .

21 I have had the pleasure of speaking to  
22 this Commission on this and earlier applications in  
23 the Tree and Slope Protection Overlay as developed in  
24 1992. As we have stated in the past, the guiding  
25 principle of these overlays is to preserve and enhance

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1 the park-like setting for distinguished neighborhoods  
2 adjacent to streams or parks by regulating alteration  
3 or disturbance of terrain, destruction of trees, and  
4 ground coverage of permitted buildings and other  
5 impervious surfaces.

6 It is timely to point out that the  
7 specific purpose of preserving and enhancing the park-  
8 like setting of the lands adjacent to park land  
9 provides for the critically needed buffer around the  
10 national forest islands that remain in our city.  
11 Without the buffering effect of adjacent residential  
12 areas retaining soils, groundwater, and tall trees,  
13 the parks would become ecologically isolated and  
14 slowly and surely have their ability to support  
15 wildlife and natural ecosystem.

16 For example, migratory bird populations  
17 that nest within the District or use the District as  
18 part of their migratory route depend on a critical  
19 mass of 25 acres in order for them to rest, feed, or  
20 breed without the environmental support of the  
21 buffering woods which would be the neighborhoods.

22 But it is quite likely that such species  
23 as the state bird of the District of Columbia, the  
24 Woodthrush, would not continue as a viable breeding  
25 presence after its yearly migration from Central

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1 American forest. A small example of a need that the  
2 parks have for buffering but very eloquent I would  
3 suggest.

4 Therefore, we want to strongly support the  
5 application of the tree and slope overlay to Forest  
6 Hills and applaud its residents for seeing the need  
7 for what amounts to a joint stewardship of the  
8 national resources.

9 This certainly was the vision of the  
10 original planners of the city in 1902, the city park  
11 system in 1902, and has been reiterated as a need  
12 through the comprehensive plan for the National  
13 Capital. The application of crown coverage is a means  
14 of determining the extent of Urban Forest is  
15 supportable if there is a clear defining means to  
16 calculate in the coverage.

17 Now, you've heard a presentation and I  
18 brought a quick mathematical translator between  
19 diameter, circumference, and area. Basically, the  
20 reference was a 30-foot diameter crown as measured in  
21 the field, not by a polygon computer but in the field  
22 measurement, and a 30-foot diameter crown translates  
23 to 706 square feet which is then a way to translate  
24 what the percentage of a lot coverage would be for  
25 crown coverage.

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1                   If I measure to 30 and the next  
2 professional measures it at 33, I call your attention  
3 to it's 150 square feet of differential between the  
4 area of the 30-foot diameter crown and the area of 33.

5       That's only 18 inches either way. By the discussion  
6 our concern is there doesn't appear to be a precision  
7 that lends itself to being replicated among  
8 professionals.

9                   And if it was desirable to claim the  
10 largest possible crown coverage, I would suggest that  
11 the tape measure could be either stretched or the  
12 farthest tip of a branch could be counted and you  
13 would end up with a skewing of how these crown covers  
14 would be calculated.

15                  Additionally, the difference between crown  
16 trees of the upper story and that of trees of the  
17 forest under-story is not clear. Just as a  
18 clarification, forest has an over-story and in the  
19 Washington area it's 90 to 100 feet tall. An under-  
20 story of trees that normally grow to about 40 to 50  
21 feet and then ground cover which you would consider  
22 either vine, shrubs, or grass.

23                  Wildlife depends, as the Woodthrush as a  
24 classic, it depends on living somewhere between the  
25 under-story and the over-story and they will not go

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1 down to ground level. Our concern is if we are  
2 preserving the crown and it is identified that the  
3 crown coverage included both under-story and over-  
4 story trees and then the replacements are only under-  
5 story trees, you end up with a cumulative diminution  
6 of the crown.

7 If the parks are depending on this as a  
8 way of buffer, then there needs to be consideration of  
9 not only the landscape plan but perhaps the makeup of  
10 the trees if this truly is a tree preservation effort.

11 It makes it very complex is the reason I'm bringing  
12 this up.

13 The requirement of a 50 percent impervious  
14 soil status is critical, in our opinion, to the  
15 maintenance of the forest and the forest-supporting  
16 soils in this overlay which should remain and be  
17 enhanced with a clear definition with many examples of  
18 what is not to be counted as impervious or pervious.  
19 The point of this is if you don't account for the soil  
20 supporting the trees, the trees will over time  
21 diminish.

22 I think in listening to the presentation  
23 of the Office of Planning, if an applicant wants to  
24 build a sidewalk or a new driveway on his lot and it  
25 is adjoining a tree that needs to be preserved and

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1 then the root damage to that tree results in the  
2 diminishment of the tree and the ultimate demise, then  
3 we are looking at a very unusual situation of who will  
4 watch that diminishment other than the park or the  
5 neighbors.

6 Likewise, if the proposal to utilize  
7 current coverage is applied to this overlay, the goal  
8 should be no substantial or no net loss of crown.  
9 Pursuit of a measurement of 25 percent on the smaller  
10 lots would seem to us to result in the logical  
11 conclusion the removal of all trees would be a good  
12 business decision since the replacement of trees after  
13 clearing would be easier than working around the trees  
14 and the roots during construction. This would be  
15 especially true of a house was demolished and a new  
16 building was built in place rather than a remodeling.

17 While the requirement to replant or  
18 replace is excellent, that condition without the  
19 equally important provision to make every effort to  
20 preserve the existing trees would open up a great  
21 potential to do extensive preconstruction clearing to  
22 support an artfully directed driveway or placement of  
23 a swimming pool in a strategic location.

24 A little design manipulation could justify  
25 the removal of the tree versus having the design to

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1 preserve the tree. There doesn't seem to be language  
2 saying that preserving the tree is the highest  
3 priority.

4 While applying the encouragement to plant  
5 trees with a 10-year growth projection would  
6 unfortunately lead to planting of many trees that  
7 would not benefit from growing with an established  
8 crown and thus likely would not grow to their natural  
9 height or proportion. Plus, the neighborhood would  
10 lose its striking scenic and natural values.

11 The projection of the forest crown needs  
12 to be placed in the consideration of this planning. I  
13 think the planning for each lot could accommodate that  
14 if it reflected the needs of the overall forest which  
15 would include the park land.

16 If you have any questions, I would be  
17 happy to respond.

18 CHAIRPERSON MITTEN: Thank you. Could you  
19 just define how crown is measured?

20 MR. MURPHY: Well, as I understand, crown  
21 coverage is to the drip line. I did a review, not  
22 very scientific. I addressed Google on the computer  
23 and I found that if I want a champion tree, and almost  
24 every state has a champion tree, they encourage you to  
25 go to the farthest most strip point. The crown could

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1 be here but that farthest one will get you the  
2 greatest span.

3 The discussion here is that there will be  
4 a span in one direction which will be, I guess, the  
5 largest and then you would go to the narrowest. If  
6 you wanted trees to be exceptionally large coverage,  
7 it wouldn't be hard to skew the data.

8 Now, I and my colleagues spent some time  
9 trying to replicate this and we never did find that we  
10 were at the same diameter. The reason I gave you the  
11 diameter circumference translating is if we're off  
12 three to five feet on a 50-foot crown spread, we're  
13 talking a very serious differential in square footage.

14 We're not criticizing the crown documentation but we  
15 are very concerned that the methodology apparently  
16 can't be relatively and reliably replicated.

17 CHAIRPERSON MITTEN: Do you have an  
18 alternative measurement method of something that could  
19 either measuring the same thing or measuring something  
20 that would have a uniform translation?

21 MR. MURPHY: I guess I grew up with  
22 diameters and the translation tables that both  
23 foresters and landscape architects use that a diameter  
24 at best height of a given species in a particular soil  
25 type will translate to a particular size. If I were

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1 looking next to Rock Creek and I was looking at, say,  
2 a Black Oak and it was 37 inches in diameter, I could  
3 pretty well tell you it's 108 to 112 feet tall because  
4 I've measured many of them.

5 I could tell you that it had approximate  
6 crown coverage of, I would presume, 70 to 90 feet  
7 because many of them in the area grow to that  
8 characteristic at that size.

9 There are tables. The tables I'm familiar  
10 with are commercial tables for logging. I understand  
11 there are landscape tables but I have never seen them  
12 so brutally detailed as that but I suspect that a mix  
13 between forest management and landscape architecture.

14 I think that table could be developed.

15 CHAIRPERSON MITTEN: And is there an  
16 uniform -- if we were going to develop such a thing,  
17 is there a uniform soil type or climate or whatever  
18 that would be defined? Is there a uniform one for  
19 Forest Hills or you have to do it --

20 MR. MURPHY: I would suggest I would be  
21 violating every rule of the soil's profession to say  
22 that it is uniform. I suspect that it's not. In my  
23 experience site aspect and slope all have a very  
24 strong affect on how trees grow and to their size,  
25 site being the soil types, aspect would be the

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1 direction they face. If they are on the north-facing  
2 slope or south-facing slope they will grow at a  
3 different rate.

4 CHAIRPERSON MITTEN: Okay. Thank you.  
5 Anyone else have questions for Mr. Murphy?

6 MR. JEFFRIES: Yes, I have a question, Mr.  
7 Murphy. So I guess I'm trying to understand this is  
8 almost the difference between art and science and what  
9 you just described -- what you consider to be more  
10 precision as relates to measurement. I just want to  
11 be clear. Are you basically saying that given just  
12 historically what the soil quality is and how a tree  
13 is pointed that you could make a determination of what  
14 the size is?

15 MR. MURPHY: I'm saying that based on the  
16 diameter of a tree the level of -- and the general  
17 soil and location in the city of Washington, there are  
18 predictable models of what the height and diameter of  
19 the crown would be. There is always a need for a site  
20 visit to confirm that but I suspect that because we  
21 are measuring crowns anyway that there is a certain  
22 amount of qualifying that would say this tree has  
23 either been attacked by insects or is next to a drain  
24 and, therefore, is not going to a typical size.

25 MR. JEFFRIES: Yes, which just sounds very

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1 scientific to me given that obviously there are all  
2 kind of variables that could impact upon the growth of  
3 that tree. I'm very comfortable with the whole notion  
4 of projections because projections aren't really  
5 science, right? It's some type of art. It was  
6 interesting to hear that you would consider this more  
7 precision because I just don't find it --

8 MR. MURPHY: I think it is a difference  
9 between a art and a science and I think it is more art  
10 than science.

11 MR. JEFFRIES: Yes.

12 MR. MURPHY: However, the industry and the  
13 professions have been making every effort to make it  
14 predictable. Whether they are absolutely predictable,  
15 I don't think they are anymore predictable than a  
16 crown measurement. My point is we have too many  
17 variables to presume that one is more precise than the  
18 other.

19 MR. JEFFRIES: Thank you.

20 CHAIRPERSON MITTEN: Mr. Parsons.

21 MR. PARSONS: Mr. Murphy, looking at this  
22 chart, I gather what you're saying is we should --  
23 you've got three columns here, diameter of the crown,  
24 circumference of the trunk, and area. Is that right?

25 MR. MURPHY: Well, actually these are

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1 simple. If you divide the diameter in half and  
2 multiply it times pi R2, you would come up with the  
3 area and the circumference is the diameter times pi,  
4 3.14. These are just simple mathematical tables.

5 A 20-inch circle would have a 62-inch  
6 circumference and a 314 square inch area or a 20-foot  
7 circle. A 28-foot diameter would have a 62-foot  
8 circumference and a 314 square foot area. The point  
9 is to show that there are geometric relations when you  
10 go from diameter to area.

11 MR. PARSONS: I'm trying to make sure.  
12 Diameter at the top of the column one is diameter of  
13 what?

14 MR. MURPHY: Diameter in the case of tree  
15 crown.

16 MR. PARSONS: Crown?

17 MR. MURPHY: Crown.

18 MR. PARSONS: And circumference is --

19 MR. MURPHY: Circumference of the crown  
20 which would be the circumference of the drip line  
21 because what we're talking about is averaging.

22 MR. PARSONS: Okay, circumference of the  
23 drip line because we've been using circumference of  
24 tree trunk in the past.

25 MR. MURPHY: Right.

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1 MR. PARSONS: And the area then is the  
2 area of --

3 MR. MURPHY: The area of crown coverage.

4 MR. PARSONS: Okay. Thank you.

5 MR. MURPHY: That obviously could be used  
6 for diameter of the log and so on. They are  
7 interchangeable just by the different units.

8 MR. PARSONS: Thank you.

9 CHAIRPERSON MITTEN: Anyone else have  
10 questions?

11 MR. JEFFRIES: Yes. This might go to the  
12 Office of Planning but it might be very useful,  
13 particularly for myself in that I'm the newest  
14 commissioner and so I'm coming in at the middle of the  
15 movie here so visuals and diagrams and so forth would  
16 be a lot more helpful.

17 Your mathematical equations I understand  
18 from way back but it might be good particularly drip  
19 lines and so forth. A lot of this is for me and I  
20 don't know, again, for the Office of Planning at some  
21 point we might want to sort of make certain there's  
22 some diagrams.

23 MR. MURPHY: If I could respond to that.  
24 It was interesting to see the number of websites that  
25 had different visuals that represented how to come up

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1 with the drip line. I think the visual that was on  
2 the screen earlier, I believe that was a Willow Oak  
3 with almost a triangular crown. Then it showed how  
4 the averaging of the crown was done to develop what  
5 the crown coverage is. Those graphics are available.

6 CHAIRPERSON MITTEN: And we will be asking  
7 the Office of Planning for a copy of their PowerPoint  
8 presentation so you will have that graphic to look at.

9 Thank you, Mr. Murphy. It's always  
10 informative when you come and visit. Thanks.

11 All right. So I think based on our  
12 rearranged order of presentation, we are ready for  
13 organizations and persons in support. I don't have  
14 the sign-in sheet so I would just ask anyone -- we  
15 have four chairs. Anyone who would like to testify in  
16 support to come forward, please. Anyone else who  
17 would like to testify in support, come forward now.

18 Only four now. Just four chairs. I have  
19 two empty so I need two more. We'll get the next  
20 group. Are each of you testifying as individuals?  
21 One of you gets five minutes and one of you gets three  
22 minutes. You can decide who is going to get five.  
23 We'll start on my left and we'll just go down the row.

24 Now you're doing the five minutes? You want to go  
25 first? Okay, fine. Put three on.

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1 MS. BAUGHMAN: Thank you.

2 CHAIRPERSON MITTEN: We try to be so  
3 accommodating.

4 MS. BAUGHMAN: Thank you. I appreciate  
5 it. Good evening. My name is Laura Baughman and I  
6 live at 4835 Linnean Avenue in Forest Hills. I'm  
7 speaking to you tonight on behalf of the Forest Hills  
8 Neighbors for Responsible Preservation.

9 We are an ad hoc group of Forest Hills  
10 residents that was organized more than two years ago  
11 to ensure that the Commission heard from the large  
12 number of residents who strongly opposed the overlay  
13 set down by the Forest Hills Citizens Association.

14 You have heard in the past our contention  
15 that the views of the FHCA, of which many of us are  
16 members, do not reflect our position on development in  
17 Forest Hills and the best ways to preserve trees. We  
18 advocated a deliberative process led by OP and  
19 incorporating input from tree preservation experts as  
20 well as residents on all sides of the issue.

21 We were looking for a rational, objective,  
22 and thoughtful examination of issues and possible  
23 solutions. The canopy approach proposed by OP emerged  
24 from such a deliberative process. We, therefore,  
25 believe it is the right approach and we support it as

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1 the compromise.

2 You have heard tonight from the Urban  
3 Forester that this approach is one he supports. You  
4 have heard from Ms. Thomas that the Attorney General's  
5 Office has advised OP that building restrictions do  
6 not belong in overlays. Those of us who strongly  
7 oppose the current overlay support the canopy approach  
8 as a workable compromise that should unit two very  
9 divided groups of residents of Forest Hills. OP has  
10 done an outstanding job.

11 Karen Foreit will now speak about some of  
12 the details of the proposal and why it merits your  
13 support.

14 CHAIRPERSON MITTEN: Thank you.

15 MS. FOREIT: I would like the five  
16 minutes, please.

17 CHAIRPERSON MITTEN: Yes, we'll give you  
18 five.

19 MS. FOREIT: Okay. Thank you. Good  
20 evening and thank you for allowing us to come before  
21 you. My name is Karen Foreit. My husband and I live  
22 at 4140 Linnean Avenue inside the overlay district.  
23 To tell you a little about myself to begin with, I  
24 have a Ph.D. in quantitative methods and more than 20  
25 years of experience as a public policy analyst.

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1                   My       publications       include       surveys,  
2       statistical       methods,       and       geographic       information  
3       systems.       I       have       personally       studied       every       database  
4       analysis       and       report       that       has       been       made       available       to  
5       the       public       by       the       Office       of       Planning,       ANC-3F,       and       the  
6       FHCA.

7                   We       firmly       endorse       the       approach       and  
8       recommendations       of       OP's       July       12       report.       We       do       so       on  
9       the       strength       of       the       data,       the       rigor       of       the       analysis,  
10       and       in       the       spirit       of       neighborhood       compromise.       The  
11       Forest       Hills       canopy       GIS       was       compiled       at       considerable  
12       public       expense.       It       is       complete,       reliable,       and       valid.

13                   It       is       also       the       only       accurate       measure       of       a  
14       canopy       inside       the       overlay       district.       If       anything,       it  
15       over       estimates       current       canopy       coverage       because       the  
16       photographs       were       taken       before       last       year's       hurricane.  
17       We       know       a       lot       of       trees       came       down.

18                   OP       correctly       characterizes       the       overlay  
19       district       as       predominately       privately       owned       developed       R-  
20       1-A       lots.       Limiting       the       analysis       to       those       squares       is  
21       the       appropriate       way       to       determine       the       existing  
22       character       of       the       neighborhood.

23                   Now,       nonstatistician       opponents       will  
24       probably       tell       you,       because       they       have       said       so       in       the  
25       past       publicly,       that       the       OP       analysis       is       flawed,       that       it

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1 is based on an average of averages and that simply is  
2 not true. The statistically correct approach to  
3 measuring neighborhood canopy for zoning purposes, and  
4 this is a zoning issue, is square by square. One  
5 square, one vote.

6 The typical privately owned developed R-1-  
7 A square has 34 to 36 percent coverage depending on  
8 whether you use the mean or the median. We could go  
9 on all night about means and medians but, in this  
10 case, they are the same.

11 Street trees, public land, and parks also  
12 contribute to our canopy but they are not the  
13 responsibility of a private property owner. We  
14 commend, again, the Office of Planning for its  
15 thorough study of the practical statistical and legal  
16 issues surrounding urban tree protection, and we  
17 especially appreciate OP's open process and  
18 willingness to meet with anyone and everyone from the  
19 community. This really is the way Government should  
20 work. They have done an outstanding job.

21 We urge you commissioners of the Zoning  
22 Commission to carefully consider the OP report and to  
23 substitute it for the current tree and slope overlay  
24 in its entirety. Not all of us like all of the  
25 provisions but we are willing to endorse the proposal

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1 in the spirit of compromise with our neighbors.

2 Please note also, as Laura has said, that  
3 we do not accept the OP proposal as the beginning of  
4 the compromise. It is the compromise. We cannot and  
5 do not accept the addition of a relevant stipulation  
6 such as impervious surface coverage setbacks or  
7 changes to minimum lot size.

8 Together with the Urban Forest Act OP  
9 provides clear and reasonable means of protecting our  
10 neighborhood trees. We, the neighbors, have done and  
11 will continue to do our part to protect the  
12 environment. We urge the city and Park Service to do  
13 the same with the public land in our midst.

14 As you know by looking at the map of  
15 Forest Hills we have a lot of public property and park  
16 property in our midst that's very heavily covered, 80  
17 to 90 percent covered, for example, in Soapstone  
18 Valley Park. That is why we have such a beautiful  
19 neighborhood and we hope that we all together can work  
20 to maintain that. Thank you very much.

21 CHAIRPERSON MITTEN: Thank you.

22 MS. HALPERN: My name is Jane Halpern and  
23 I live at 3054 Harrison Street at the very northern  
24 edge of the proposed Forest Hills Tree and Slope  
25 Overlay District. I'm here tonight because I want to

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1 express my support for the alternative plan that has  
2 been developed by the Office of Planning.

3 My support for the plan is based both upon  
4 the details that are laid out in the plan and also the  
5 manner in which the proposal was developed. I had a  
6 lot of problems both with items in the original  
7 proposal as well as how it was developed.

8 First, the original plan contained a  
9 number of provisions that had questionable relevance  
10 to tree protection, increase of the minimum lot size,  
11 increase of front yard setbacks, increase of side yard  
12 setbacks. These clauses appeared to a lot of us to  
13 represent a restriction of development rather than a  
14 tree protection bill. The alternative plan developed  
15 by the Office of Planning was strictly focused and  
16 really focused on trying to protect the trees.

17 Second, the original tree and slope  
18 overlay was very punitive and it really offered no  
19 incentive for planting trees or increasing the tree  
20 canopy. It simply stated that you could not get a  
21 building permit for seven years if you cut trees. It  
22 had no requirements for replanting of trees. The  
23 new proposal has plans that will require homeowners to  
24 replace and maintain trees which is the goal that we  
25 are all after.

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1 I believe the alternative proposal was  
2 developed in a professional and honest manner. The OP  
3 sought inputs from experts. They looked to see what  
4 approaches were working in other jurisdictions and  
5 they really tried to come up with the best plan that  
6 suited Forest Hills.

7 Fourth, the alternative proposal was also  
8 developed with input from Forest Hills residents in an  
9 open and honest manner. The residents from the Office  
10 of Planning came to the community. They met with any  
11 residents who requested a meeting. They came to our  
12 ANC meeting. They asked for our input and they revised  
13 the plan in response to that.

14 The original plan was filed by a few  
15 Forest Hills residents who claimed to represent the  
16 FHCA. I would like to repeat as I've said here before  
17 that I was at the time and I still am a dues-paying  
18 Forest Hill Citizens Association member. I was never  
19 informed. My opinion was never asked and I was never  
20 given a chance to vote on the submission on my behalf  
21 to the Zoning Commission, this rather onerous  
22 submission.

23 If the FHCA officers had acted in an  
24 honest and open collaborative manner two years ago, I  
25 think we would all be sitting here tonight. The

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1 current proposal is a compromise. It's not a perfect  
2 bill. Any determined individual can and will break  
3 laws and regulations but I think that the current bill  
4 puts the right amount of additional restrictions on  
5 the residents to preserve trees.

6 The facts do not support, again, a  
7 contention that the over-development and clear cutting  
8 is running rampant in Forest Hills. I ask you in the  
9 spirit of compromise to support this bill. It's the  
10 right amount of additional zoning for Forest Hills  
11 today. Thank you.

12 CHAIRPERSON MITTEN: Thank you. Sir.

13 MR. HAWLEY: My name is Willis Hawley. I  
14 live at 2828 Upton Street. I'm a political scientist.  
15 I've taught at Yale, Duke, Vanderbilt, and now the  
16 University of Maryland and conducted a number of  
17 surveys. I know this Commission is concerned about  
18 citizen's point of view and you have before you a  
19 survey which purports to represent the views of the  
20 citizens of the community.

21 You should know, however, that this survey  
22 is not a good way for you to know the answer to that  
23 question. I won't give you a full-scale analysis but  
24 five quick points. First of all, surveys are  
25 difficult to develop under any circumstance but when

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1 there is a difference of perspective, it's important  
2 that those perspectives be represented in the  
3 formulation.

4 That is not the case here. What you have  
5 is a situation where the debate is structured by the  
6 same side so the proponents of the overlay basically  
7 told you what both sides think and erroneously so.  
8 Secondly, there is misinformation in the survey items.

9 In each case it shapes the respondents toward the  
10 bias of the developers.

11 Thirdly, there are a number of questions  
12 that fall into the category of how often do you beat  
13 your dog or wife or whatever. But in all these cases  
14 they establish the desirability of the tree and slope  
15 proposal. There are several hypotheticals, for  
16 example, which say if then whatever which paints a  
17 picture of an onerous situation that does, in fact,  
18 exist so you have to contrast that hypothetical with  
19 the reality being proposed.

20 Fourth, when the survey is over, what  
21 happens is the respondents who support that bias over  
22 respond and those who don't say, "Well, what's the  
23 point of my doing this?" The response itself is  
24 nowhere near represented for that reason alone.  
25 Finally, the response rate is very low and would not

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1 be acceptable, for example, in a dissertation that we  
2 consider.

3 What you have here is a representation of  
4 a community view that you can't count on. What you  
5 know for sure is that there are differences of  
6 perspective within this community. When that occurs  
7 the general rule that a political scientist will often  
8 suggest is that you look to expertise. In this case,  
9 especially if that expertise has been done carefully,  
10 openly, and has come forward in a deliberative way  
11 with a reasonable solution.

12 The reason we have Government is to solve  
13 problems where there is a difference of perspective in  
14 a community. That is the situation here so I support  
15 the proposal that you have before you and hope that  
16 you will act accordingly.

17 CHAIRPERSON MITTEN: Thank you. Questions  
18 for this panel? Any questions? All right. Thank you  
19 all for coming down again.

20 Now I have the list in front of me so I'll  
21 call some names. Carolyn Hawley, Mark Baughman,  
22 Warren Watts, Jim Foreit. Okay. If I remember  
23 correctly, you are Mr. Baughman, right?

24 MR. BAUGHMAN: Yes.

25 CHAIRPERSON MITTEN: Okay. So we'll start

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1 with Mr. Baughman and we'll work our way down the  
2 table. I just wanted to have a point of reference  
3 there.

4 MR. BAUGHMAN: I'm not sure that's a good  
5 thing that you remember my name. It's still Mark  
6 Baughman and my wife, Laura, and I have lived at 4835  
7 Linnean Avenue, N.W. for 10 years. I have testified  
8 before this Commission in opposition to the original  
9 TSO but I am here tonight to offer my support to the  
10 current Office of Planning's proposal without the  
11 amendments proposed by the ANC.

12 I'm not willing to accept the ANC's  
13 suggested amendments. First, the amendments take up  
14 the concept of impervious surface which has  
15 historically been in zoning ordinances and public  
16 service manuals for years for storm water management.

17 Now this has been appropriated as a tree preservation  
18 issue.

19 There are some "experts" who insist that  
20 trees cannot exist in an urban environment. We've  
21 heard from a Park Service employee who said that  
22 street trees cannot live and are a waste of time. A  
23 quick drive up Connecticut Avenue makes me wonder what  
24 the real agenda here is.

25 Second, the amendments propose a new set

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1 of convoluted controls including the ANC review of  
2 building permits. After watching this scene for the  
3 last two years, I have no faith that this is going to  
4 be anything more than -- less than a disaster.

5 Third, there has never really been a  
6 credible case made that there is a minimum lot size  
7 problem. The ANC amendments would not really make any  
8 difference if you took on a big property like the  
9 Peruvian Embassy parcel and so forth. They are not  
10 going to save any trees on that issue.

11 I believe the real issue to some of my  
12 neighbors is the scale of houses that are being built  
13 and the addition to existing houses. This is a  
14 complicated issue and I'm aware that there's a task  
15 force that is right now in place examining changes to  
16 the zoning regulations among other related issues.

17 I, too, have seen a disturbing number of  
18 over-scale houses all around Washington that look to  
19 me like architectural ransom notes. We no longer have  
20 zoning like we did as a society when they built my  
21 1930 tutor.

22 Somehow we are going to have to come to  
23 terms with how people live in houses and how we can  
24 form appropriate zoning regulations for residential  
25 areas for the next 50 to 75 years.

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1 Obviously a tree and protection overlay is not  
2 the way. I urge the petitioners to take the right  
3 course and talk to the task force.

4 Finally, I wish to emphasize, as others  
5 have, that we support this as a compromise. There are  
6 a lot of really raw hard feelings in our neighborhood  
7 still and I think that with some extreme exceptions  
8 most of those will go by but if we start adding on  
9 these additional amendments to this overlay, I think  
10 we will find ourselves once again in that deeply,  
11 deeply ugly divided situation. Thank you.

12 CHAIRPERSON MITTEN: Thank you.

13 Go ahead, sir. If you would shut off your  
14 mike, that would help.

15 MR. FOREIT: Jim Foreit. I live in Forest  
16 Hills. I've lived there for 10 years. I am a public  
17 health researcher. I have 25 years of survey  
18 experience. I also would like to speak to this FHCA  
19 survey.

20 There is something interesting about this  
21 survey that seems to draw the ire of all survey  
22 specialists in this room. It really gets down to one  
23 thing. A very crucial issue here is what does the  
24 community want. This was perhaps one way of trying to  
25 establish that.

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1                   Unfortunately, the FHCA, of which I'm a  
2 member, has consistently pulled out every stop, tried  
3 every trick in the book to make it seem as if this  
4 community was 100 percent behind their proposal. That  
5 is not true. We already heard the question their bias  
6 discussed.

7                   I'm going to discuss another kind of bias  
8 in this survey which is nonresponse bias. The point  
9 is that the FHCA says that they have a scientific  
10 sample accurately reflecting community sentiment.  
11 This is not true. They attempted to do a census of  
12 all 641 households. They only got a 35 percent  
13 response rate to their census. They have a 65 percent  
14 nonresponse rate.

15                  Think for a moment if the director of the  
16 Census Bureau came to the Congress and said, "Well,  
17 yes, we've done the census and we managed to cover 35  
18 percent of the population." You can imagine the stick  
19 that would arise from that.

20                  So the basic problem here is that the  
21 nonrespondents outnumber the respondents by two to  
22 one. Here is what the problem comes down to. If the  
23 households that did not respond think differently than  
24 the households that did respond, then the survey does  
25 not accurately respect community opinion. Okay. So

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1 nonresponse is very bad. Is there anything we can do  
2 about it? Well, there are a couple of products out  
3 there on the market where you can attempt to adjust  
4 for a nonresponse bias.

5 The most common is probably statistical  
6 manipulations. That requires you in your  
7 questionnaire to gather information about the  
8 characteristics of the people who are responding.  
9 Unfortunately, the FHCA did not bother to do that in  
10 their questionnaire so we have no way of adjusting  
11 this nonresponse bias to see if it might look like  
12 something reasonable or not. I'm afraid that the FHCA  
13 is out of luck here. The bottom line is that the  
14 survey finds that 138 households like the FHCA  
15 position and also shows that there is about 90 against  
16 it.

17 CHAIRPERSON MITTEN: If you could wrap up.  
18 You are almost out of time.

19 MR. FOREIT: Okay. The community is  
20 divided. We support the compromise and it's based on  
21 good science and good community feedback. Thank you.

22 CHAIRPERSON MITTEN: Thank you.

23 Ms. Hawley.

24 MS. HAWLEY: Hi. I'm Carolyn Hawley. I  
25 live on Upton Street and we have lived here about a

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1 little over two years. Prior to moving there we owned  
2 a condominium on Connecticut because we wanted to see  
3 what it was like living in Washington. Before we  
4 lived in Annapolis.

5 I guess I'm here really as an average  
6 citizen looking at this situation just sharing some of  
7 my thoughts with you. First of all, I'm very  
8 appreciative of the job that you all do. I'm glad I'm  
9 not sitting there.

10 The first thing we heard about this tree  
11 and slope overlay was shortly after we moved in and we  
12 saw all these signs up on the trees. We didn't know.

13 In fact, we found out later that we live next to an  
14 officer of the Forest Hills Neighborhood Association  
15 and we knew nothing about it. Even though I've been  
16 trying to get involved in the community and do  
17 participate in various things, I never saw anything up  
18 in the Giant or, you know, in the church or anywhere  
19 that I participate so this was a big surprise.

20 Then later we found out that, in fact, our  
21 own neighborhood association, which we had not known  
22 anything about, had submitted this plan and it had  
23 been set down we were told. Fortunately, we then  
24 started looking in the northwest and we learn more.  
25 We went to the Planning Commission's joint meeting.

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1 It was a marvelous experience. We heard people that  
2 were adamantly opposed, adamantly supportive.

3 We thought the Planning Commission did a  
4 marvelous job in hearing our viewpoints. That's what  
5 a citizen wants to find out, not just that everything  
6 is done and it's up on the tree and you have to do it.

7 I support the efforts for the Planning Commission.  
8 That's all I have to say. Thank you.

9 CHAIRPERSON MITTEN: Okay. Thank you very  
10 much.

11 Mr. Watts.

12 MR. WATTS: My name is Warren Watts. My  
13 wife and I live at 3054 Harrison Street in the overlay  
14 district. I favor the Office of Planning's tree  
15 canopy proposal as a compromise to a proposal from  
16 officers of the Forest Hills Citizens Association that  
17 has created controversy for over two years.

18 An open transparent process was followed  
19 that allowed any resident to participate and the  
20 Office of Planning should be commended for this. I  
21 want to alert you to a continuing problem with FHCA  
22 officers.

23 As was brought to your attention  
24 previously, these officers abuse their mandate under  
25 the FHCA constitution. They purport to speak for the

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1 association even though their terms in office have  
2 expired. I believe Mr. Clark intends to speak to you  
3 this evening as president of the FHCA despite his term  
4 having expired in June.

5 I urge you to discount his assertions that  
6 he speaks for the members of the FHCA. For the  
7 benefit of the new commissioner who is present  
8 tonight, let me briefly review the reasons for my  
9 concerns. My wife and I have been members of the FHCA  
10 for nearly eight years. Both of us along with other  
11 association members were surprised to learn that the  
12 then association president filed the original overlay  
13 petition claiming FHCA's sponsorship.

14 No advance notice was given to FHCA  
15 membership as a whole, much less any membership-wide  
16 discussion or approval. The same individual later  
17 extended her term in office beyond the limit mandated  
18 by the association's constitution and continued to  
19 file documents and testified in hearings in front of  
20 the Zoning Commission using the title of FHCA  
21 president.

22 The next association president has  
23 continued the apparent officer tradition of filing and  
24 voicing opinions with governmental agencies as  
25 association positions with no prior membership-wide

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1 discussion or approval. To date no membership-wide  
2 meeting has been held to discuss or approve any of  
3 these positions including any overlay in Forest Hills.

4 Due to the lack of opportunity for members  
5 to participate, attendance at the infrequent meetings  
6 is pointless. Members are informed of FHCA decisions  
7 after the fact and are told these actions were done on  
8 their behalf. These actions contrast sharply with  
9 other area associations such as the Palisade Citizens  
10 Association.

11 Over two years after the initial overlay  
12 filing a survey focusing on a Forest Hills Overlay  
13 with a cover letter from the FHCA president was mailed  
14 to Forest Hills residents. The survey was formulated  
15 with no membership-wide notice, discussion, or  
16 approval and the source of funding for this survey is  
17 unknown.

18 The current association president has also  
19 extended his term past the constitutionally mandated  
20 limit. His term expired this past June. Association  
21 by-laws state that officers shall be elected at the  
22 annual meeting and the annual meeting shall be their  
23 regular spring meeting. This being the 22nd of July  
24 spring has officially come and gone.

25 The association had a 75th anniversary

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1 party in June and could easily have held an election  
2 for new officers but did not. I can only guess that  
3 Mr. Clark worried that someone might be elected who  
4 did not favor the set down overlay and would so  
5 testify tonight on behalf of the FHCA.

6 CHAIRPERSON MITTEN: You need to wrap it  
7 up here.

8 MR. WATTS: Okay. I'm done.

9 CHAIRPERSON MITTEN: Okay.

10 MR. WATTS: It's very difficult for me to  
11 consider actions such as these as enhancing  
12 neighborhood cooperation and collaboration in Forest  
13 Hills. Thank you.

14 CHAIRPERSON MITTEN: Thank you. Sorry I  
15 stepped on your last line there. Just hold your seat  
16 for just a second and I'll see if anybody has any  
17 questions. Any questions?

18 VICE CHAIR HOOD: Madam Chair, I just  
19 wanted to ask. I should have probably asked the last  
20 panel but I'm just curious. Did any of you fill out  
21 the survey?

22 MR. WATTS: No, I didn't.

23 VICE CHAIR HOOD: You didn't? Okay.  
24 Thank you.

25 CHAIRPERSON MITTEN: Thank you all for

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1 coming down tonight.

2 All right. Cindy Kelly, Mr. Maudlin. I  
3 have a little trouble with this one. It looks like  
4 Margie --

5 MS. SHANKS: Shanks.

6 CHAIRPERSON MITTEN: Shanks. Okay. And  
7 Andrew Stevenson. We'll have Ms. Kelly go first. Go  
8 ahead.

9 MS. KELLY: My name is Cindy Kelly. My  
10 husband, two sons, and I live at 4205 Lenore Lane in  
11 the area covered by the Forest Hills Tree and Slope  
12 Overlay . As part of a career in environmental  
13 regulation I directed the environmental program for  
14 the International City/County Management Association.

15 I would like to make some comments about the process  
16 that OP used in bringing this canopy proposal forward  
17 and recommend the Commission approve the proposal.

18 When the original tree and slope overlay  
19 was proposed and was actually put in effect on an  
20 emergency basis, you might say that OP abdicated its  
21 responsibility as the D.C. Government agency charged  
22 with developing a systematic and consistent approach  
23 to planning and land use in the District.

24 It treated the tree and slope overlay and  
25 as complete, not worthy of its time or effort.

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1 However, once this Commission got involved and  
2 signaled it would take a harder look and charged OP to  
3 conduct an evaluation and make recommendations, OP  
4 stepped up to the task and it really deserves  
5 tremendous accolades for the investment and time and  
6 thought that it has given and the outcome.

7 They looked at the workings of other tree  
8 and slope overlays as they presented earlier. They  
9 studied literature. They looked far afield to  
10 different models and took it very seriously. What  
11 they have come up with is basically the state of the  
12 art, much more appropriate and effective than what had  
13 been put in place.

14 It consulted the DCRA as the permitting.  
15 It consulted the Attorney General as the legal  
16 propriety of adding various building restrictions in  
17 an overlay and learned that such restrictions are  
18 overreaching. It published its results. As you know,  
19 it met with the community groups and conducted a very  
20 open and fair process which we are very appreciative  
21 of.

22 They concluded what we don't need is a  
23 system that turns the Urban Forester into an expert  
24 witness in tree-by-tree adjudication, nor make every  
25 building permit an exception requiring comments from

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multiple understaffed agencies and discretionary approvals by the BZA.

We live in a city where a lot of Government systems that have failed have been frustrating. We think that trying to fix a problem by overlaying it with further requirements and penalties is not the way to go. It only further tarnishes our reputation for self-government.

What OP proposed is consistent with and reinforces regular Government processes. The owner and buyer will have a fairly clear understanding of his and her rights and obligations including required mitigation making it possible to plan with reasonable certainty. We support the canopy. Thank you.

CHAIRPERSON MITTEN: Thank you, Ms. Kelly.

Ms. Shanks. You need to turn on the microphone.

MS. SHANKS: Good evening. My name is Margie Shanks. I live at 3002 Albemarle Street with my husband and my children. I guess I want to state first for the record that I'm a tree lover and I'm a nature lover. Originally when the tree and slope overlay was proposed I thought, oh, my goodness, you know. We love trees and we love nature. This is

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1 probably a good idea.

2 But actually later we learned that, in  
3 fact, it wasn't just protecting trees but, in fact, it  
4 included a lot of zoning changes that really  
5 restricted the rights of a lot of us to improve our  
6 properties. We're not big developer types. I'm just  
7 talking about sort of the modest renovations that  
8 people would like to think they can do.

9 Now sort of mid-stream years after we  
10 bought our property all of a sudden there are a lot  
11 more onerous zoning requirements that we have to live  
12 with. I don't think that's necessary to achieve the  
13 goal and the goal is to protect trees. That's why  
14 we've come around.

15 We originally, like I said, thought the  
16 overlay was a good idea but we felt a little mislead  
17 because when it was presented to us it was not  
18 explained there are all these zoning changes, too,  
19 that increase side yard setbacks and front yard and  
20 those sorts of things.

21 We do feel that the process that was  
22 undertaken was now transparent and a lot of folks who  
23 thought, "Gee, this is a good idea," and expressed  
24 support really didn't understand what they were  
25 expressing support for. Certainly that's our

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1 situation.

2 I would also like to just say very quickly  
3 we also felt that the survey that was taken was  
4 flawed. It essentially is slanted toward the point of  
5 view of in favor of the overlay and you look like a  
6 tree hater if you answer questions a certain way. I  
7 agree that I don't think you can rely on the answers  
8 in that survey because I think a lot of folks didn't  
9 necessarily realize the significance of answering  
10 questions in a certain way.

11 We do think that the Office of Planning  
12 has come up with a proposal that really is trying to  
13 achieve what everybody wants to do and that is  
14 preserve trees. That's why our family has come around  
15 to this side in support of the proposal. Thank you.

16 CHAIRPERSON MITTEN: Thank you.

17 Mr. Maudlin:

18 MR. MAUDLIN: Thank you. Good evening.  
19 My name is Robert Maudlin. I'm testifying here as an  
20 individual. However, I am an ANC commissioner. In  
21 fact, I'm the only ANC commissioner who lives in the  
22 Forest Hills Overlay District. My single member  
23 district includes more than half of the households in  
24 the overlay district.

25 In June of 2002 I co-authored an ANC

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1 minority report recommending that the Zoning  
2 Commission reject the Forest Hills Tree and Slope  
3 Overlay . This is Exhibit 82 in this proceeding. The  
4 reasons for that recommendation regarding the Forest  
5 Hills Tree and Slope Overlay that was set down  
6 December 2002 still stand today.

7 However, I'm pleased to be here this  
8 evening to support the alternative proposal presented  
9 by the Office of Planning in its final report dated  
10 July 12, 2004. The staff of the Office of Planning is  
11 to be commended for their diligent work in researching  
12 various options to address concerns of the Forest  
13 Hills residents regarding the Forest Hills Tree and  
14 Slope Overlay set down in December 2002.

15 The Office of Planning research and  
16 crafting the alternative proposal was an open process  
17 which included consultation with Forest Hills  
18 residents and a public meeting with the ANC. The  
19 alternate proposal is a sound and manageable plan.

20 The Office of Planning by using the GIS  
21 survey to objectively determine the current canopy in  
22 Forest Hills and proposing a plan based on canopy  
23 coverage brings the tree protection into the 21st  
24 century. The proposal being considered at this  
25 hearing is designed to not only preserve the existing

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1 Forest Hills canopy, but it also provides for tree  
2 planting to increase the existing canopy.

3 The Office of Planning attorney proposal  
4 in comparison with the original proposal provides for  
5 flexibility and meeting preservation requirements. It  
6 requires an easily enforced mechanism that  
7 incorporates review by the Urban Forestry  
8 Administration. It provides for reducing the impact  
9 on the building area of lots and maintaining canopy  
10 coverage in Forest Hills.

11 In short it meets the needs of the  
12 community and will preserve and enhance the forest in  
13 Forest Hills. I urge this Commission to approve the  
14 Office of Planning's alternative proposal. Thank you.

15 CHAIRPERSON MITTEN: Thank you, Mr.  
16 Maudlin.

17 Mr. Stevenson.

18 MR. STEVENSON: My name is Andrew  
19 Stevenson. I live at 2955 Albemarle Street with my  
20 wife and children. I'm a practicing architect in the  
21 District of Columbia. I have spoken down here before  
22 against the original tree and slope proposal and I'm  
23 really only here to provide a little more added, if  
24 you will, weight to what my colleagues have said.

25 I have met with the Office of Planning on

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1 this and have been working alongside everyone here on  
2 this. I think at this point this is a good  
3 compromise. I was concerned with the first proposal  
4 because I thought it intruded on my clients and other  
5 homeowner's rights. It also assumed that they didn't  
6 know what to do with their property better than anyone  
7 else.

8 Also I thought that it would, in fact,  
9 impede the natural evolution of a city. Too much  
10 regulation begins to not allow a city to grow and  
11 develop and basically reflect the society and the  
12 people that I work for and what they need. I just  
13 would close in saying that I think this is a  
14 reasonable way to proceed. I'm not one who favors  
15 regulation in general but I think this one has some  
16 potential. I'll end with that.

17 CHAIRPERSON MITTEN: Thank you. Any  
18 questions for this panel? Mr. Hood?

19 VICE CHAIR HOOD: Madam Chair, I wanted to  
20 ask Mr. Maudlin since he has over half of the  
21 constituents in his single member district. I know  
22 you've had a lot of conversation with your  
23 constituents. Do they also take your position and  
24 support the alternate proposal?

25 MR. MAUDLIN: Commissioner Hood --

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1 CHAIRPERSON MITTEN: Would you turn your  
2 mike on, sir? Thanks.

3 MR. MAUDLIN: Commissioner Hood, I believe  
4 that the community is still strongly divided on this.  
5 When I ran for reelection 19 months ago, my  
6 opposition favored the tree and slope overlay that was  
7 set down in 2002. I think that was the difference in  
8 what we were presenting to the electorate in the  
9 single-member district.

10 I was elected, a landslide of 12 votes. I  
11 think that shows you where the community was coming  
12 down on this issue. I think now that this proposal  
13 that the Office of Planning has come up with, which a  
14 lot of the residents, and I agree with them, it's a  
15 compromise. I think this is tending to move us back  
16 to where we really should be. It's an unfortunate  
17 cleavage in the community that this has created.

18 VICE CHAIR HOOD: Thank you.

19 CHAIRPERSON MITTEN: Anyone else? Thank  
20 you all.

21 Barbara Deutsch from Casey Trees. Then I  
22 have, is it, Peter Halle? Sorry. Anyone else in  
23 support. Now would be the time to come forward.

24 Ms. Deutsch, why don't you go ahead.

25 MS. DEUTSCH: Thank you very much. Good

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1 evening Madam Chairman and members of the Commission.

2 My name is Barbara Deutsch and I'm a Senior Director  
3 of Programs and Research at the Casey Trees Endowment  
4 Fund. I'm also a landscape architect and an active  
5 member of the American Society of Landscape Architects  
6 and an ISA certified arborist.

7 On behalf of the Casey Tree Endowment Fund  
8 I thank you for the opportunity to appear before you  
9 this evening to comment on the proposed changes to the  
10 Forest Hills Tree and Slope Overlay.

11 I think I put support and do not support.

12 We basically support the -- the applaud the Office of  
13 Planning for all the work that they did and we  
14 basically support the canopy approach but we do not  
15 support some of the recommendations that they made and  
16 I'll go through those three areas that we primarily  
17 disagree with.

18 For those unfamiliar with Casey Trees we  
19 were established in 2001 by a generous gift from Mrs.  
20 Betty B. Casey who was concerned about the extensive  
21 loss of the District's tree canopy over the recent  
22 years. A study by American Forest completed in 1999  
23 documented a loss of nearly two-thirds of the city's  
24 heavy tree cover since 1973. For those in the  
25 audience we have the satellite photos that show the

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1 loss of tree cover.

2 I think it's significant to point out that  
3 during this time period there was a decrease in  
4 population so trees and development are not just  
5 because there's more people. They aren't mutually  
6 exclusive so it depends on how we plan design and  
7 development and that's why the decisions we make here  
8 today, or that you will be making, are important to  
9 the future of the city in terms of its tree cover.

10 Our mission as a organization is to  
11 restore, enhance, and protect the tree cover, the tree  
12 canopy of Washington, D.C. and do that in cooperation  
13 with the community and federal agencies and city  
14 agencies and individual citizens. It is our concern  
15 for protecting this remaining tree cover that brings  
16 us here before you today.

17 As you can see in these satellite images,  
18 the remaining tree cover is primarily on protected  
19 land and that's why it's most important that we have  
20 protection provisions in hand with zoning.

21 CHAIRPERSON MITTEN: I'm going to give you  
22 a suggestion. You're not going to have time to read  
23 your whole testimony so --

24 MS. DEUTSCH: I'm going to skip through  
25 it.

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1 CHAIRPERSON MITTEN: Okay.

2 MS. DEUTSCH: Don't worry.

3 CHAIRPERSON MITTEN: Okay.

4 MS. DEUTSCH: All right. But we do think  
5 that this overlay could be precedent setting and  
6 that's why we wanted to weigh in on the issue.

7 Obviously for someone to invest \$50  
8 million in tree cover there are benefits from that,  
9 not only to add beauty to the neighborhood but to help  
10 solve our city's air and water quality problems. I  
11 think certainly in Forest Hills obviously everyone  
12 here sees the value in trees so I don't need to  
13 belabor the point of the value of the trees. That's  
14 why you live in Forest Hills so we want to protect the  
15 forest.

16 There is a good return on investment and  
17 mental health, public health and safety benefits as  
18 well, as I said, solutions to our air and water  
19 quality problems and that's what we're working on at  
20 Casey Trees is to try to determine what type of tree  
21 cover objectives we need to reach certain types of  
22 benefits whether they be for air quality, water  
23 quality, crimes, the location of the trees and the  
24 amount of tree cover.

25 Certainly there's value in individual

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1 trees. When we did our tree inventory in 2002, which  
2 I've attached a printout from our tree map on our  
3 website which shows location in Forest Hills of the  
4 overlay. You can click on any tree and find out the  
5 compensated value of that tree.

6 You can find out its height, its crown  
7 radius, its DBH, all the information we collected, as  
8 well as its environmental contribution value in terms  
9 of how much that individual tree, how much carbon it's  
10 storing, how much ozone it's removing from the air.

11 As you know, we are severe nonattainment  
12 for ozone in this region. That's worth \$120 million  
13 in highway funds this year alone for the district.  
14 This summer we are also working on another inventory  
15 to look at the value of the total urban forest canopy  
16 for D.C. and we can calculate these overall  
17 environmental benefits to come up with tree cover  
18 objectives.

19 Again, we applaud the effort to go to a  
20 canopy objective, cover objective. We are concerned  
21 about a number of provisions in these proposed rules  
22 and one of them is the actual cover objectives. We  
23 believe that permitting a reduction in the average  
24 tree canopy cover in the area from nearly 55 percent  
25 to 25 percent for lots less than 7,500 square feet and

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1 32 percent for lots greater than 7,500 square feet is  
2 excessive.

3 We noted at the onset that the District  
4 has overall lost nearly two-thirds of its tree cover  
5 over the past quarter century and that we are  
6 concerned about if this is one of the heavier  
7 neighborhoods.

8 Could I have five minutes?

9 CHAIRPERSON MITTEN: You did have five  
10 minutes.

11 MS. DEUTSCH: Tree cover objectives, the  
12 10-year rule, and also the concern for the trees  
13 greater than 24 inches in circumference.

14 CHAIRPERSON MITTEN: Thank you. You have  
15 pretty thorough written testimony so that will make up  
16 for what you didn't get to.

17 Let's see. We have Mr. Halle.

18 MR. HALLE: Peter Halle.

19 CHAIRPERSON MITTEN: Would you turn on  
20 your microphone for me, please?

21 MR. HALLE: Yes. Peter Halle, Madam  
22 Chairman. I am a resident of the overlay area. I  
23 live at 2801 Chesterfield Place, N.W. I am here  
24 because like everybody in the room, I support the  
25 goals of tree protection. The strange thing here in

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1 this sharply divided community is that the community  
2 doesn't seem to be divided on that basic subject.

3 The opponents to this plan, which I  
4 support, are as deeply committed to tree protection as  
5 I and the other proponents are. It's just that we  
6 have different views as to how to accomplish these  
7 laudable and valid goals. I support the proposal here  
8 simply because it gives property owners greater  
9 flexibility in meeting tree preservation.

10 Let me give you an example and it's a  
11 personal example. I have a planned addition to my  
12 house and under either tree proposal I can build that  
13 addition. The problem with the Forest Hills Overlay  
14 is that in addition to tree preservation requirements,  
15 it adds these additional zoning requirements such as  
16 side yard and front yard setbacks.

17 My proposed addition would comply with the  
18 preexisting side yard requirements which is eight feet  
19 on each side but doesn't comply with the proposed  
20 overlay requirements of an average of 24 feet. I've  
21 been essentially waiting for the entire period of this  
22 controversy to decide what to do because I prefer not  
23 to file and go through the process of getting an  
24 exception because it is, at least, perceived to be  
25 lengthy and onerous.

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1 CHAIRPERSON MITTEN: Longer than this  
2 process?

3 MR. HALLE: Well, that perhaps leads me to  
4 my conclusion. The Office of Planning proposal, I  
5 think, solves the problems that we are facing except  
6 for one and that is we need a decision and I would  
7 certainly hope that this Commission can come to a  
8 decision one way or the other promptly. Thank you.

9 CHAIRPERSON MITTEN: Thank you. Any  
10 questions for this panel? I just have one question  
11 that is in your written statement and that you had  
12 also mentioned. You say that you believe permitting a  
13 reduction in the average tree canopy cover in the area  
14 from nearly 55 percent to 25 percent. Just tell us  
15 where the 55 percent comes from.

16 MS. DEUTSCH: Wasn't that the average tree  
17 cover in Forest Hills?

18 CHAIRPERSON MITTEN: So that's included  
19 public land.

20 MS. DEUTSCH: Yeah.

21 CHAIRPERSON MITTEN: Okay. Just wanted to  
22 see if you had some different statistics.

23 MS. DEUTSCH: See the forest for the  
24 trees. The individual trees have been collectively --  
25 you know, individual properties but then collectively

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1 how they all work together for ecosystems, for  
2 property values, for environmental services.

3 CHAIRPERSON MITTEN: Okay. Thank you.  
4 All right. Last call for folks in support. Okay.  
5 Then we'll now have the petitioner's case leading off  
6 the organizations and persons in opposition. The  
7 petitioner will go first.

8 MR. CLARK: We'll need just a couple of  
9 seconds to get --

10 CHAIRPERSON MITTEN: Why don't we take a  
11 three-minute break right now and then we'll come back.

12 (Whereupon, off the record.)

13 MR. CLARK: Good evening, ladies and  
14 gentlemen. My name is George Clark. There have been  
15 various remarks that have been made about either my  
16 authority to be in office or anything related to that  
17 but I don't intend to address those otherwise.

18 I was part of the group that testified in  
19 favor of the original overlay for two full evenings in  
20 July and September of 2002. Many citizens testified  
21 and over 100 wrote letters of support.

22 Many other groups testified or submitted  
23 letters in support of the overlay including ANC-3F  
24 which voted on July 19th six to one to support the  
25 existing overlay if it had to choose between it and

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1 the OP proposal, although it has other suggestions to  
2 make: The National Park Service, the Natural  
3 Resources Defense Council, the Forest Hills  
4 Neighborhood Alliance with over 400 members, and the  
5 Audubon Naturalist Society.

6 We urge the Commission to reject the  
7 alternative offered by the Office of Planning as it is  
8 stated for four principal reasons.

9 First, the OP alternative would not  
10 prevent a single tree from being removed in Forest  
11 Hills. Not one. Thus, it hardly qualifies as a tree  
12 protection overlay. Adopting it in its current form  
13 would amount to nothing more than a well-meaning  
14 symbolic gesture.

15 Secondly, the Forest Hills community is  
16 not evenly divided about the overlay. We've heard  
17 about the survey. I have sitting next to me Maeve  
18 Hebert who conducted the survey and we'll hear more  
19 from her about that survey. This is what she does for  
20 a living.

21 The OP report is based on many flawed  
22 assumptions. American Forest says that OP  
23 "misrepresented" its recommendations. That's the  
24 words American Forest chose, misrepresented its  
25 recommendations.

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1           OP also claims that the average canopy in  
2 private owned areas of Forest Hills is 36 percent  
3 while its own figures show at least 40 percent. We  
4 heard from Mrs. Foreit why that's true, because all  
5 the squares were given equal weight whether they had  
6 two square feet or a million square feet.

7           OP's method of eliminating street trees  
8 also resulted in the severe under-count of canopy and  
9 the automatic approval after 30 days from the Urban  
10 Forestry Administration would eliminate the right to  
11 effective review by the Board of Zoning Adjustment.  
12 Finally, on that point, the OP's report is  
13 inconsistent with the comprehensive plan for Ward 3.

14           Finally, and maybe most importantly, OP's  
15 approach would severely endanger the three national  
16 parks that surround three sides of Forest Hills in  
17 this overlay and the fourth national park that runs  
18 through it. Virtually every square in the overlay  
19 that borders on these parks has a canopy in excess of  
20 40 percent.

21           The average canopy of those squares is  
22 over 60 percent. OP would allow a dramatic reduction  
23 in canopy in those squares down to 36 percent thus  
24 endangering the trees and streams in these valuable  
25 parks as well as the canopy of the city as a whole.

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1 Are there improvements that can be made to  
2 the existing overlay? Yes, we have said some in our  
3 written filings. I think I presented an analysis on  
4 why the current overlay proposed by Office of Planning  
5 would allow any tree to be taken down. The answer is  
6 because what it says is all you have to do to be in  
7 compliance is to have a tree plan that you'll have the  
8 required canopy in 10 years. What that means is  
9 that you can take down any tree as long as you promise  
10 to plant the other ones.

11 The reason I mention this is because  
12 people have been very concerned about mature trees.  
13 You'll hear more about mature trees from Jim Urban who  
14 will testify in this presentation. I would be happy  
15 to go through that analysis but it's in writing. You  
16 have already had it and I'll address questions if the  
17 Commission has them.

18 Let me address the neighborhood is not  
19 sharply divided. The OP assumes that the neighborhood  
20 is sharply divided. Bob Maudlin assumes that the  
21 neighborhood is sharply divided. I might point out  
22 that maybe for Bob's good luck seven days before the  
23 election this Commission adopted the original overlay.

24 In other words, it was no longer an issue.

25 It adopted the original overlay October 28th. The

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1 election was seven days later. He did manage as I  
2 think a very good commissioner, and he's been a good  
3 commissioner for many years, to barely beat out  
4 somebody who was unknown in the community.

5 Let me talk about the survey results. 62  
6 percent support the current overlay. 23 percent had  
7 some opposition. 15 percent were unsure or did not  
8 answer the question. Thus, the current overlay is  
9 supported by a margin of almost three to one.

10 There are a number of other questions. We  
11 asked how people felt about the canopy approach that  
12 OP then had and we found very similar numbers to what  
13 I just said. It was 63 to 24 against. 76 percent of  
14 all respondents felt that any canopy proposal should  
15 include a requirement that some mature trees be  
16 preserved. OP's proposal does not do that.

17 There is also overwhelming support for  
18 keeping the canopy level in Forest Hills above 40  
19 percent. 72 percent feel that a reduction to 40  
20 percent is unacceptable. OP would take it down to 36  
21 percent or lower. 77 percent feel that a reduction to  
22 25 percent is unacceptable.

23 We also surveyed what people thought about  
24 the purposes of the original overlay. What we did was  
25 quote the original overlay. Maybe that's what some of

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1 the opponents object to when they say we biased the  
2 overlay. What we did was quote what it says. On that  
3 81 percent thought it was very or fairly important to  
4 prevent significant impacts on open space park land in  
5 other areas. 80 percent thought it was very or fairly  
6 important to preserve the natural topography and  
7 mature trees to the maximum extent possible.

8 OP disavows those goals in the original  
9 overlay. Two of them it specifically says, "Forget  
10 it. It's zoning. We don't like it. We don't want to  
11 consider that anymore." With respect to mature trees,  
12 OP's proposal doesn't protect them.

13 On the other hand, 48 percent of people  
14 thought that having an arborist for a tree plan was a  
15 good idea and we support that. We think that is a  
16 good idea in the original overlay. Why not? Let's do  
17 that. Maybe we'll get some -- we won't have any  
18 problems with DCRA if they actually get some account  
19 of what's going on.

20 OP has made a number of mistakes in its  
21 report. The first thing it did was compute an average  
22 of the averages. If you look at this chart, and it's  
23 really kind of hard to see now, is that if what you do  
24 is take five lots, and what I did was put in different  
25 areas but I used OP's formulas.

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1           What I did was come up with a square area,  
2   a total area of 1 million and 4,000 square feet and a  
3   tree area of 960,000 square feet. That means, as Ms.  
4   Mccarthy said, that there is a certain percentage of  
5   the total land area that is covered by canopy. In  
6   this instance it's the 95.6 percent number that is up  
7   there.

8           The way OP computed this it's 20 percent.

9   What it did was do the equivalent of saying, "Give me  
10   the average, 1 percent, 1 percent, 1 percent, 1  
11   percent. Then give me a 96 percent, divide by how  
12   many squares there are, and now I get 20 percent."

13           In fact, if you use OP's own figures, and  
14   I don't have their chart up here, what you'll see is  
15   that the average canopy as they calculate it is 40  
16   percent but they goofed on 40 percent. If you look at  
17   this map -- I'm not sure why we have the grid there.

18           Do we have something in front of that?

19           MR. URBAN:     It's a computer glitch.  
20   You're not going to do anything about it.

21           MR. CLARK:    Okay. When you look at this  
22   map you'll see several corners in here and you'll see  
23   what's on the right is the OP computer canopy  
24   projection. You'll see in the upper right-hand corner  
25   actually along the street that runs in the middle here

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1 which is Davenport Street that there is no canopy  
2 along the left side of that street. It's a street  
3 that kind of winds along from the lower left to the  
4 upper right. All that is a picture where they said  
5 there's no canopy.

6 If you then go to 29th Street, now you  
7 have three different areas here, and it's in the lower  
8 right-hand corner. There are two streets that  
9 intersect. Let me go to the upper right and you'll  
10 see two streets that intersect and it's not the one at  
11 the far right but a little bit further over and you'll  
12 see that there's no canopy at that corner.

13 Well, that's the tree of which there is no  
14 canopy at the corner. OP must say that's a street  
15 tree, although you can see it's not a street tree.  
16 Then if you look in the backyard where there's no  
17 canopy, you see tree enormous trees which are counted  
18 as no canopy.

19 Then if you go down to the southeast  
20 corner of Albemarle and 29th, you will see again there  
21 is no canopy on that corner. This tree is the biggest  
22 one that I can find in the neighborhood. It's got at  
23 least 100-inch circumference. OP says no canopy.

24 The same thing across the street. No canopy.  
25 That tree is no canopy.

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1 I mentioned the 60 percent. What I did  
2 was take OP's numbers and I created a little  
3 spreadsheet and I have a yes and no for whether or not  
4 a square borders the park. What I did again was keep  
5 their formulas but just sort out the squares that  
6 border Rock Creek Park, Ford Circle Park, or Soapstone  
7 Valley Park or Melvin-Hazen Park and I took all those.

8 When you compute the canopy and compute  
9 the average canopy at 60 percent, even if you use OP's  
10 method and divide how much is in each square, you get  
11 55.9 percent. OP has severely understated the amount  
12 of canopy. I'm happy to address questions at the end  
13 of this but I would like to turn over the microphone  
14 to our surveyor, Maeve Hebert.

15 MS. HEBERT: Madam Chair and members of  
16 the Commission, good evening. My name is Maeve Hebert  
17 and I am speaking to you tonight as the administrator  
18 of the Forest Hills Citizens Association Survey. I'm  
19 an analyst with Peter D. Hart Research where I've  
20 worked for the past six years. I also hold a masters  
21 degree from George Washington University in media and  
22 public affairs where I focused on public opinion,  
23 theory, and statistics.

24 George Clark contacted me in May and asked  
25 me to conduct a survey of the Forest Hills

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1 neighborhood regarding the tree and slope overlay and  
2 the proposed canopy regulations. I sought and  
3 received permission from my employer to conduct the  
4 survey on an independent basis.

5 I would like to begin by briefly  
6 explaining the process I went through in developing  
7 the methodology and the questionnaire for the survey  
8 and I will conclude by addressing some of the  
9 criticisms that you have heard tonight.

10 The first step in the process was an  
11 initial meeting with Mr. Clark where he explained the  
12 issues as he saw them and provided me with an initial  
13 briefing on the effective and proposed zoning  
14 regulations that apply to Forest Hills.

15 Mr. Clark also furnished me with copies of  
16 the effective and proposed regulations which I in turn  
17 read and used as aids in developing the questionnaire.

18 I submitted it to Mr. Clark for his comments. He  
19 made several suggestions as to changes and additions.

20 In some cases I accepted his suggestions. Equally  
21 often I rejected his suggestions because they either  
22 did not ring true with what I had read independently,  
23 or because, in my opinion, it would have created an  
24 unfair or biased question.

25 This back and forth process of

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1 questionnaire revision was thorough and took  
2 approximately three weeks. The questionnaire was  
3 mailed to every address in the current tree and slope  
4 overlay boundary on June 14, 2004. Subtracting those  
5 surveys returned by the postal service for incorrect  
6 addresses, this resulted in a total universe of 641  
7 questionnaires mailed.

8 By mailing a survey to every available  
9 address, this survey meets the textbook definition of  
10 a random sample. A random sample is one which every  
11 member of a given population has an equal chance of  
12 inclusion. In this case every address within the  
13 overlay was included. It is the equivalent of calling  
14 every operational phone number in the United States  
15 for a national survey and offering each household a  
16 chance to respond.

17 By virtue of being a random sample, the  
18 results can be assumed to be representative of the  
19 opinions of Forest Hills residents. There is one  
20 potential complicating factor pointed out by Mr.  
21 Foreit and Mr. Halle which I will address momentarily.

22 Residents of Forest Hills were given 26  
23 days from the date of mailing to return their surveys.

24 This was three days beyond the stated deadline but  
25 accepted additional late responses due to a high-end

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1 volume of returns.

2 A total of 224 responses were counted in  
3 the final results amounting to a 35 percent response  
4 rate. Although some may, and have, disagreed I  
5 consider this to be a very good and more than  
6 acceptable response rate. While higher response rates  
7 are certainly preferable, in real world application a  
8 35 percent response rate is more than acceptable to  
9 maintain the integrity of a sample.

10 For example, the average response rate of  
11 the telephone NBC News and Wall Street Journal surveys  
12 conducted by Peter Hart Research, the firm for which I  
13 am employed, is generally lower than 50 percent.  
14 This, however, is close to the highest response rate  
15 we received for any telephone survey conducted by our  
16 shop. Mail surveys nearly always result in lower  
17 response rates due to the increased amount of effort  
18 required by the respondent.

19 Hart Research recently conducted a mail  
20 survey for a well-known environmental group among  
21 their magazine subscribers which resulted in a  
22 response rate of less than 10 percent. Mr. Foreit  
23 analadized this to the Census Bureau conducting a  
24 sample of the United States population and submitting  
25 that to the Census. In fact, just that was proposed

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1 before the last census. It was rejected because of  
2 constitutional considerations, not because of concerns  
3 about the accuracy of that kind of sampling.

4 The 35 percent response rate translates to  
5 a 5.29 percent margin of error at the 95 percent  
6 confidence level. This in layman's terms means that  
7 95 percent of the time the actual opinion falls plus  
8 or minus 5.29 percent of the recorded percentage.

9 Once all the surveys were collected they were  
10 entered individually into a statistical software  
11 package known as SBSS.

12 Turning now to some of the criticisms I  
13 have heard regarding the survey. It has been alleged  
14 that this is not a random representative sample and,  
15 therefore, suffers from sample bias. This is quite  
16 simply untrue as I explained a few moments ago. It is  
17 possible, however, that the survey is susceptible to  
18 another kind of bias known as response bias to which  
19 Mr. Foreit and Mr. Halle referred.

20 This occurs when for whatever reason the  
21 opinions of those who did not return the survey differ  
22 in some significant way from the opinions of those who  
23 did return the survey. This is an unknowable variable  
24 when it comes to opinions regarding the tree  
25 regulations in Forest Hills. As such it is not

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1 something over which I had any ability to control for.

2           However, while I am unaware of any  
3 research specifically conducted on mail surveys,  
4 academic research and considerable literature does  
5 show that in the case of phone surveys on most topics,  
6 there is no substantive difference in the opinions of  
7 those who agree to participate and in the opinions of  
8 those who refuse.

9           It was suggested that I could have  
10 manipulated the data by measuring the actual  
11 population of Forest Hills and comparing it to  
12 responses that I received on the survey. There are  
13 significant problems in doing that with a sample size  
14 this small. Whenever you try to give more weight to  
15 one interview versus another when you are only talking  
16 about 224, that introduces an entirely new kind of  
17 error.

18           Additionally, when I tried to ask  
19 questions that would have allowed me to do that such  
20 as, "What size lot do you live on? How long have you  
21 lived in Forest Hills?" there was an incredibly high  
22 nonresponse rate so even if I had asked additional  
23 questions with that goal in mind, I would still have  
24 been unable to do that given the propensity to just  
25 simply not answer those questions of a personal nature

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1 which is in many respects completely understandable.

2 It has been alleged that some of the  
3 initial questions in the survey introduce an element  
4 of bias into the results. The purpose of these  
5 questions was not to prejudice respondents but simply  
6 to assess a baseline level of support for a  
7 theoretical public interest in protecting trees.

8 Since the protection of trees is the over-  
9 arching goal of any regulation in question here  
10 tonight, it was important to assess whether or not  
11 that goal was shared by the residents of Forest Hills.

12 The results speak clearly in that tree  
13 preservation is, in fact, a shared goal. It has been  
14 said that some of the questions force respondents that  
15 declare themselves as anti-tree. This is what Mr.  
16 Halle referred to as a beat your wife question. I  
17 disagree with that assessment of these questions.

18 There are any number of legitimate reasons  
19 for a respondent to have disagreed with the goal of  
20 making preservations of trees a priority for Forest  
21 Hills including a belief that property rights are  
22 paramount or, as one respondent pointed out, a belief  
23 that large canopy can exacerbate asthma symptoms. Had  
24 I tried to create a biased survey, I doubt that I  
25 could have created one that would have driven

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1 responses as far toward the pole as this survey turned  
2 out.

3 It has been alleged that the questionnaire  
4 contains factual inaccuracies. To this I can only  
5 respond that there appears to be fundamental  
6 disagreement in the case of many of the facts of this  
7 matter. I did not, however, accept Mr. Clark's  
8 interpretation of the facts and I independently  
9 verified items in the survey.

10 The criticism I have heard most often is  
11 that the questionnaire required respondents to make  
12 false, forced choices. I categorically reject the  
13 accusation that in any case respondents were asked to  
14 make a false choice, but I freely admit that in many  
15 cases they were asked to make a forced choice. This  
16 is a common technique in survey research.

17 There is a significant body of literature  
18 which has found that when respondents are presented  
19 with a middle option, they tend to choose that option  
20 even when they in many cases hold actual strong  
21 opinions.

22 Furthermore, and perhaps most importantly,  
23 for those who felt that an appropriate choice was not  
24 offered or that the survey did not offer them an  
25 opportunity to express an opinion that they felt was

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1 important and relevant to the matter at hand, the  
2 questionnaire included a blank half page for them to  
3 write anything which they wanted. As the results you  
4 have indicate, many respondents did, in fact, avail  
5 themselves of that opportunity to offer additional  
6 comments or to clarify responses.

7 I would be happy to answer any extra  
8 questions.

9 CHAIRPERSON MITTEN: Thank you. We'll go  
10 through the whole presentation.

11 MR. URBAN: My name is James Urban. I'm a  
12 landscape architect in Annapolis, Maryland. I have a  
13 particular expertise in trees and soils and have  
14 taught courses at University of Pennsylvania, Harvard  
15 University, and workshops at many universities around  
16 the country and in Canada.

17 I gave the keynote address last month at  
18 the European Arborist Conference in Holland and will  
19 give an address next month at the United States  
20 Arborist Conference. I want to talk to you  
21 essentially about the science of trees to which it's  
22 germane to this topic and be available to answer  
23 questions.

24 The first issue is essentially they are  
25 studying canopy as opposed to looking at a tree-by-

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1 tree issue. The first is that there is significant  
2 precedent within tree preservation and tree ordinances  
3 for looking at trees either by individual tree  
4 preservation or canopy.

5 The problem is that in terms of accuracy  
6 of measurement, it's much more accurate to measure the  
7 diameter of a trunk of a tree which can be done with  
8 great replication than it is to measure the diameter  
9 of a canopy.

10 Any two professionals will come up with  
11 dramatic differences on canopy because you are  
12 estimating where that drip line is, where the edge of  
13 it is, and what is exactly straight up if you're on  
14 uneven terrain. It can be extremely difficult.

15 The problem is the canopy is used for  
16 large scale studies because of the ease of  
17 measurement. It's a very effective tool for looking  
18 at large scale planning issues but I'm not so sure  
19 it's a very effective tool when you get down to the  
20 lot by lot legal status issue.

21 Finally, I think that it's much easier to  
22 inspect and to review whether there is compliance when  
23 you are looking at a tree-by-tree preservation  
24 requirement. Did you save this tree as opposed to did  
25 you save this area of canopy. It's a much more

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1 objective way of looking at the problem when you are  
2 out on the ground in the middle of construction or  
3 when you are reviewing permits or did the thing work  
4 10 years later.

5 The second issue is the D.C. Tree Bill an  
6 effective tool for preservation. I believe it is not  
7 an effective tool in that it does not require the  
8 preservation of any trees in the District. If any  
9 applicant comes with any tree and meets all of the  
10 requirements meaning they pay the fees, the Urban  
11 Forestry Administration does not have the legal  
12 authority to reject that permit.

13 If I have the money, I can take my tree  
14 down. The problem comes in is that the fees are  
15 actually quite low. To take down a very large tree 24  
16 inches in diameter, the fee is about \$3,000. In a  
17 home where the cost of the home construction may be  
18 half a million dollars, which is not at all unusual  
19 for these kinds of properties in Forest Hills.  
20 Another \$3,000 to take out a tree is not a large  
21 hurdle and I wish that it was higher but that is the  
22 reality that the fee is really not all that high.

23 The next is in the value of canopy. When  
24 does canopy become valuable? In this instance size  
25 matters. The higher the canopy is, the more it begins

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1 to give you in environmental benefits that everyone  
2 talks about. Having volume which you get with  
3 increased depth gives you much larger carbon  
4 sequestration, filtration of pollutants, water  
5 retention, habitat than you get with smaller areas  
6 that are covered with lower canopy.

7 Finally, having layers within the canopy,  
8 multi-layers of under-story and over-story essentially  
9 leverages all of those effects that you begin to get  
10 with higher canopy.

11 What is the accuracy of using canopy  
12 coverage as a legal standard? First of all, using  
13 aerial photographs can have significant differences.  
14 I am going to use square 277 up there which got a  
15 canopy measurement of about 6 percent in the OP study.

16 This is that site. It's a site I'm very familiar  
17 with.

18 I happened to have designed the landscape.

19 The tree that you are looking at was saved by the  
20 client at great expense and is a major part of the  
21 urban forest. When I took the actual measurement of  
22 the canopy, upper-story and under-story trees, not  
23 counting the street trees at the bottom, I came up  
24 with approximately 23 percent.

25 Now, this plan probably will achieve 50

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1 percent canopy coverage at some point in time but this  
2 plan is over 10 years old and we are only at 23  
3 percent right now. It will be a long time before we  
4 get to 50 percent.

5 The second is the accuracy of estimating  
6 future canopy. Here the issue becomes much, much more  
7 difficult. The gentleman from the Park Service who  
8 talked about the relationships of trunk diameter to  
9 canopy is exactly right. There is a very, very close  
10 relationship between trunk diameter and canopy. What  
11 he didn't mention is there is not a very, very close  
12 relationship between the expansion of trunk diameter  
13 and the expansion of canopy consistent.

14 Not all Oak trees are going to grow at the  
15 same rate. That is because there are many, many  
16 factors, soil, drainage, solar orientation, and the  
17 list is quite long, that dramatically impact what you  
18 might expect out of a tree over a period of time.

19 While two professional foresters might  
20 vary in their estimate of existing canopy by 20 or 25  
21 percent, we might differ on our projected canopy  
22 estimate by 50 or much, much larger percent depending  
23 on whether we are going to take an optimistic or  
24 pessimistic view of the growing site that we have to  
25 deal with.

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1           There has been already discussion about  
2 the D.C. tree list which I'll avoid at this point and  
3 move onto I think a really important issue which is  
4 tree preservation an impediment to development. Are  
5 we seriously infringing on the rights of someone to  
6 develop a property in the way that they want.

7           I strongly believe that, and I'll read  
8 this sentence, "Almost any healthy tree can be saved  
9 and can accommodate almost any residential  
10 construction program provided there is the desire, the  
11 wills, and the skill to do it. You just simply need  
12 to respect the biology of the tree. Space is rarely  
13 an issue."

14           This is about a 35-inch plain tree that  
15 was put 11 feet from the face of that building. That  
16 is a private residence in Annapolis. The two-story  
17 structure that you see is actually built on top of the  
18 tree roots. The tree roots go all the way across that  
19 addition.

20           We got the rear and side setbacks on this  
21 particularly property rescinded by the Planning  
22 Commission so we could move the building so it would  
23 be in a place where we could have the building coexist  
24 with the tree. It took a huge amount of effort but  
25 the owner wanted to save that tree.

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1           You see the small Willow Oak in the  
2 foreground. That tree was planted about three inches  
3 in caliber. It's now about four inches in caliber.  
4 It's been in the ground five years so we should be  
5 halfway through what we would expect that tree to do  
6 in its 20-year growth. It's not growing very fast.  
7 It's still very healthy and it's doing quite well but  
8 that's what Willow Oaks do. They sit there for a long  
9 time and try to figure out what's going on and  
10 eventually it will start to grow very rapidly.

11           If you thought putting the tree 11 feet  
12 from the building of that size and making it very  
13 healthy, how about this? This is Wiconda Bank outside  
14 of Chicago. Those are seven Oak trees three of which  
15 are growing beside the building, four of which are  
16 growing inside of the building. This was a bank owner  
17 who wanted to save these trees. He did not want to  
18 move out of town. The story behind this bank is  
19 incredible. It's awesome.

20           The arborist said, "We can do this but we  
21 only have one requirement." The arborist hired the  
22 architect, the landscape architect, the engineer, and  
23 he had the ability to fire anyone on the team who  
24 wasn't doing his job right. About anything can be  
25 done if you have the will and the skills.

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1 I believe that to be really effective any  
2 change to the existing tree and slope overlay must  
3 provide for equivalent protection of pervious surfaces  
4 as is provided in the existing plan. Pervious  
5 surfaces are very, very important but I think there is  
6 one thing that is missing.

7 We are tending to consider any part of any  
8 building driveway as impervious. By doing that  
9 we are missing a lot of opportunities to offer people  
10 to save pervious surface by building on top of it. It  
11 can be done very, very easily. It just takes some  
12 skill. It takes some care.

13 It also takes the ability of the client to  
14 get credit for doing this. I have all the time  
15 clients say, "I don't get any credit for doing this  
16 down at the Zoning Department. They won't let me have  
17 this pervious payment as pervious. We have to make  
18 some changes that allow these kinds of building  
19 practices to happen."

20 We have to give equivalent tree protection  
21 to existing large trees. We are proposing that, one,  
22 the canopy should go to 50 percent for all sites. We  
23 think that the provision for trees of 75 inches or  
24 greater in circumference those are protected. They  
25 can't be taken down. It's a very good and very

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1 important part of this provision.

2 We think that maybe the tree bill which  
3 talks about a tree that is 55 inches in circumference,  
4 which is about a 17-inch diameter tree, is a good  
5 place to start saying that once you get to that size  
6 it is a special tree just as the zoning ordinance  
7 says. It's a special tree and ought to get special  
8 consideration.

9 Maybe if you are going to remove those,  
10 there ought to be some discussion that somehow within  
11 an approval process whether it's the Board of Zoning  
12 Appeals, whether it's the ANC. I don't know  
13 politically the right way to go but there should be  
14 some way in which a public body can review and say,  
15 "You may take that down."

16 We also think it's very important that you  
17 set a bottom end for what is counted as canopy.  
18 Actually we had a lot of discussion about this. I  
19 think 24 inches in circumference, which is only a  
20 seven-and-a-half or eight inch caliber tree, is a good  
21 bottom end.

22 If a tree is smaller than that, it doesn't  
23 count at the beginning and it doesn't count at the end  
24 as canopy because it's not really contributing  
25 functional canopy at that point. It may in the future

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1 but until it gets greater than that point, we think it  
2 probably shouldn't count in the equations.

3 We are proposing come modification  
4 bringing the canopy up to 50 percent. We think it is  
5 very important that any tree that is planted to  
6 replace a tree be of the same stature. If you take an  
7 Oak out, you should plant a Beech and I will support  
8 Beech very strongly. Some other tree that will get to  
9 the same size and to define what is included in  
10 canopy.

11 CHAIRPERSON MITTEN: We'll have to pick up  
12 the rest of these if we're not clear on your slides.

13 MR. URBAN: I think it was only one but  
14 I'm happy to end and I thank you very much.

15 CHAIRPERSON MITTEN: Thank you.

16 Questions for the petitioner. I do have  
17 to ask this question because I'm interested in it and  
18 it was your last slide regarding the measurement  
19 standards which is you seem to be willing to accept  
20 the canopy notion with adjusted percentages. What are  
21 you proposing as a more accurate or more consistent  
22 way to measure canopy?

23 MR. URBAN: This is where we run into the  
24 problem. All the science on this has basically been  
25 based on canopy. There is some forestry data on what

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1 we call basil area which is essentially the diameter,  
2 looking at trunk diameter which is also referred to  
3 basil area.

4 I'm not sure that we have the science to  
5 give you the kinds of direction that the canopy people  
6 would like to be at. I think canopy is extremely  
7 important. Don't get me wrong. I think that if I was  
8 the tree tsar I would probably not use canopy.

9 I would try to figure out how to do it in  
10 a way that used trunk diameter and looked at  
11 individual trees, but I was trying to find a way in  
12 which you could wiggle something through. There has  
13 been a huge amount of work done here and it's simply a  
14 matter of I think getting the numbers right.

15 A very important slide was my last slide  
16 which was that we need to develop standards for how  
17 you are going to count and measure canopy at the  
18 beginning and at the end. I think that can be done.  
19 It's going to take some sort of a group of people who  
20 are pretty expert at this to work it out.

21 Because I think it can be done, I think  
22 I'm not willing to throw the baby out with the bath  
23 water here. I would rather not be a canopy as a legal  
24 standard but I think there are probably ways around  
25 that if you worked at it but the science is not quite

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1 there to give it to you yet.

2 CHAIRPERSON MITTEN: Okay. Thank you.  
3 Questions? Mr. Hood.

4 VICE CHAIR HOOD: I just wanted to say  
5 something about the survey, not that I'm pro or con to  
6 it. Being a Civic Association President myself, Mr.  
7 Clark, I think you made an attempt. I'm not saying  
8 I'm for it or against it or all the rest of that.  
9 Sometime in that position if you do something you're  
10 in trouble and if you don't do something you're in  
11 trouble. I've been there.

12 I do want to look at one of the statements  
13 that someone made. As an overall -- I'm not the  
14 expert on surveys but overall a lot of people in  
15 different communities are not even engaged in what is  
16 going on. Would you say that is maybe the assumption  
17 of why some people -- for example, someone said in  
18 here, "I've never heard of Soapstone Valley Park. I  
19 know nothing about tree and overlay regulations."  
20 Would you say that is probably the general consensus  
21 of the surrounding area -- I mean, of the  
22 neighborhood?

23 MR. CLARK: Commissioner Hood, I don't  
24 know if that is general consensus but I do know there  
25 are a lot of people who feel that way like there is in

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1 any community. One of the interesting things here is  
2 there are 640 households so even if I have the 10  
3 percent of people who are always opposed to something,  
4 I get 64. You can draw your conclusions from that.

5 The other thing I will say is that many,  
6 many people thought that this issue was over with in  
7 October 2002. As things have developed further,  
8 dozens and dozens and dozens of people have said to  
9 me, "Didn't we do that? Isn't it over?" So that's  
10 also something that influenced, I think, the response  
11 rate.

12 VICE CHAIR HOOD: I guess my point is you  
13 have a certain amount of people who want to be engaged  
14 and then you have a certain amount who need the sound  
15 byte. They don't care about all the rigamarol, all  
16 the regulations. They just want the sound byte  
17 version and that's it. They are not engaged like some  
18 activists, especially those here tonight. I think  
19 that is typical not just in Forest Hills but all over  
20 the city.

21 MR. CLARK: I agree with you.

22 VICE CHAIR HOOD: You've answered my  
23 question. Thank you.

24 Thank you, Madam Chair.

25 CHAIRPERSON MITTEN: Anyone else have

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1 questions? Mr. Jeffries?

2 MR. JEFFRIES: Mr. Clark, I just wanted to  
3 spend a little time dealing with this whole notion of  
4 just collaboration with some of the other members of  
5 the Forest Hill neighbors for responsible  
6 preservation. I'm just dealing with the amount of  
7 time that you would have in order to really get the  
8 kind of consensus around creating the survey.

9 This is one of their concerns, they were  
10 not brought into the loop. How much time do you think  
11 you would have needed to pull them into really getting  
12 comfortable with the types of questions that would be  
13 asked in the survey and getting some level of  
14 consensus around how you are positioning questions on  
15 the survey.

16 MR. CLARK: Commissioner Jeffries, to  
17 answer that question very frankly, it wouldn't be out  
18 yet.

19 MR. JEFFRIES: So in terms of the amount  
20 of time that you -- how much lead time did you have, a  
21 month?

22 MR. CLARK: What I as trying to do was to  
23 wait as long as I could for the Office of Planning to  
24 submit a report so that I could say this is what they  
25 are thinking about now because I knew they were going

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1 to change it. I just finally right into the deadline  
2 we weren't going to know so I had to send it out based  
3 on what they knew or what we knew at that time.

4 MR. JEFFRIES: Okay. Thank you.

5 CHAIRPERSON MITTEN: Can we get a copy of  
6 the chart that you put up that showed the squares that  
7 were not adjacent to the park and the squares that  
8 were adjacent to the park and all that.

9 MR. CLARK: I will submit those slides  
10 separately. I thought I had to affix that to my  
11 testimony but when I looked at it, I see I didn't.

12 CHAIRPERSON MITTEN: We would like to have  
13 that.

14 MR. CLARK: I have it with me but I only  
15 have one copy.

16 CHAIRPERSON MITTEN: That's fine. We'll  
17 leave the record open for some things.

18 Okay. Any other questions? Okay. Thank  
19 you.

20 All right. Then we'll now move to  
21 organizations and persons in opposition. I have Joan,  
22 it looks like, Benesh, Barbara Simmons, Jim Casserly.

23 MR. CLARK: Madam Chair, could I ask that  
24 Mr. McGrath be allowed to testify in this group?

25 CHAIRPERSON MITTEN: In this group?

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1 MR. CLARK: Yes.

2 CHAIRPERSON MITTEN: Sure.

3 MR. CLARK: Thank you.

4 CHAIRPERSON MITTEN: Mr. Swanson will have  
5 to hold his seat if he's here. We'll have Joan  
6 Benesh, Barbara Simmons, Jim Casserly, and Dorn  
7 McGrath. Mr. McGrath, you have been nominated to go  
8 first.

9 MR. McGRATH: Oh, really?

10 CHAIRPERSON MITTEN: That's what I heard.  
11 I thought somebody said let him go first.

12 MR. McGRATH: Well, I will be glad to do  
13 that. Madam Chairperson, I want to apologize for  
14 listing you in my prepared text as Mr. Chairman. I  
15 will blame it on the computer.

16 I am Dorn McGrath, Jr. I'm a fellow of  
17 the American Institute of State Planners. I served  
18 several years on a committee of 100 on the federal  
19 city and I'm very familiar with planning and zoning  
20 issues in the District.

21 Some of you know, I ordinarily sit at this  
22 table when you're not here as a member of the Zoning  
23 Advisory Committee. We express our deep sympathy to  
24 you for having to work with that ordinance. It was  
25 drafted first in 1958. It's high time you had a

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1 chance to wrestle with this in more modern terms.

2 I'm not going to go beyond the fact to say  
3 that I've lived in Forest Hills now for more than 14  
4 years. I am very familiar with the neighborhood. I'm  
5 also very familiar with the zoning battles, many of  
6 them that the city has had to endure over many years  
7 including the proposal to girdle healthy huge trees so  
8 they would die so that someone could exploit the  
9 property.

10 Normanstone built more houses than the one  
11 that supported the original huge trees. That's the  
12 reason why that ordinance was adopted. We really had  
13 to fight that one hard and we had the Commissioner of  
14 Fine Arts on our side to do so. An important idea.

15 I think this is a very important idea and  
16 I was just delighted to hear the testimony by Mr.  
17 Murphy and also by Mr. Irvin because they cast  
18 necessary light on this question of canopy analysis.  
19 It is only fair to say that the District is not at the  
20 cutting edge of the science involved in canopy  
21 analysis nor its application to urban terrain and it's  
22 difficult.

23 Mr. Parsons pointed out earlier that you  
24 have the problem of nonsymmetrical strange shapes that  
25 emerge. I had the problem when I worked on another

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1 commission of which I was chair for this city of  
2 finding 200-foot long buses on streets only 20 feet  
3 wide because someone didn't push the right sequence of  
4 buttons. The same thing can happen in canopy  
5 analysis.

6 We are very early on in the process of  
7 developing canopy analysis and even GIS. Five years  
8 ago no one in the District of Columbia knew what GIS  
9 was and we are now attempting to apply this and I  
10 think it's very risky to try to do that at this  
11 particular point.

12 The other point I want to make is I feel  
13 that many of you recognize that there was a day when  
14 there was a great movement to bring the blossoms back  
15 to Anacostia. Many of you are too young to know about  
16 the blossoms in Anacostia but it used to be full of  
17 cherry trees and every spring Anacostia would come  
18 alive because of those trees.

19 Well, everyone loves trees and there are  
20 trees on Martin Luther King Avenue right now near the  
21 big chair because people said we want our trees. One  
22 has to be quite careful about providing for trees in  
23 this particular area.

24 The other problem that I have, and I'll  
25 wind up my comments, is that all of the Office of

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1 Planning maps Forest Hills is flat. The maps also  
2 exclude completely the forestation that occurs on  
3 various deep terrain in Rock Creek Park immediately  
4 across. Planning 101 tells us that you do not simply  
5 divide a city in these arbitrary patterns just because  
6 the ordinance applies only to a portion of it.

7 You have to think ecologically in terms of  
8 what is across the road. Broad Branch is a very  
9 narrow road but a very important place for the  
10 preservation of trees. Neither do the maps treat  
11 progression of soil mechanics nor the run-off patterns  
12 in an extremely rocky area. These are the reasons why  
13 I have to oppose this rather superficial approach that  
14 the Office of Planning has now proposed.

15 CHAIRPERSON MITTEN: Thank you.

16 MR. McGRATH: The rest of my testimony  
17 speaks for itself.

18 CHAIRPERSON MITTEN: Thank you very much.

19 I think each of you is testifying as an  
20 individual because we've already heard from the  
21 petitioner. Ms. Simmons, you want to go next?

22 MS. SIMMONS: I'm Barbara Simmons,  
23 immediately past president of the Forest Hills  
24 Citizens Association and also one of the -- I don't  
25 know what word to use -- victims of the various ad

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1 hominem charges. I will not spend any time responding  
2 to those charges like Mr. Clark, only to say that they  
3 are not factually supported.

4 I would like to call your attention to the  
5 Ward 3 plan. It's amazing what wonderful stuff is in  
6 there and if you haven't looked at it recently, it's  
7 got a wealth of great stuff. It's the Ward 3 plan, of  
8 course, that talks about mapping the tree and slope  
9 overlay.

10 I would like to point out the various  
11 sections. I will not read from all those sections but  
12 I will, as I say, point out the sections so you can  
13 take a look. I think it's in your package.

14 MS. SCHELLIN: It was my understanding you  
15 were going to give those to us this evening.

16 MS. SIMMONS: Yes. Okay.

17 MS. SCHELLIN: If you want to give those  
18 now, I'll pass them out.

19 MS. SIMMONS: Okay. I couldn't remember.  
20 Let me get them.

21 I know you could probably take judicial or  
22 administrative notice of the Ward 3 plan but sometimes  
23 it's easier if you can just see it and what it says.  
24 It's really, as I say, a wonderful document.

25 CHAIRPERSON MITTEN: I think we want to be

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1 on the record as saying we are very disturbed by the  
2 volume of paper in this tree case.

3 MS. SIMMONS: I would not have bothered to  
4 do it except I will call your attention to the  
5 sections and page numbers where I think you could kind  
6 of look at it.

7 CHAIRPERSON MITTEN: Okay.

8 MS. SIMMONS: You don't have to read the  
9 whole thing.

10 CHAIRPERSON MITTEN: I don't mind reading  
11 it but it's just the paper.

12 MS. SIMMONS: Right. I understand. Okay.  
13 On page 14-3 -- it's page 3 but because the section  
14 number of 1400, every page is going to say 14 hyphen  
15 or 14 dash something. On page 3 I wanted to call your  
16 attention to the fact that it says, "It is a major  
17 theme of this ward plan that the integrity of park  
18 lands be maintained and improved wherever necessary.

19 I was president at the time the tree and  
20 slope overlay was filed. We wanted very badly to make  
21 sure that it wasn't simply a question of preserving  
22 trees, although that is very important, but also to  
23 preserve the park lands and do whatever is necessary  
24 to support whatever this ward plan suggested as a way  
25 to preserve or protect park lands.

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1                   Page 14-12 you will see it says,  
2 "Environmental Protection Goals. The preservation and  
3 improvement of the environmental qualities of Ward 3  
4 including maintenance and enhancement of the park and  
5 open space system is one of the goals of the  
6 environmental protection there. Then 1403.4, and this  
7 one I really think is important, it says after the  
8 colon.

9                   It's at the bottom of the page, 14-12,  
10 "The District Government should do the following." It  
11 doesn't say it may do the following or it can do the  
12 following. It says the District should do the  
13 following so it's mandatory.

14                   When the opponents of tree and slope say,  
15 "We don't like it and we don't see why our private  
16 property should be in any way diminished because of  
17 these ideas of these few residents of Forest Hills you  
18 kind of like tree and slope except it turns out that  
19 the overwhelming majority like tree and slope but the  
20 opponents are very vocal and so that may be why we get  
21 the impression that it's an evenly divided  
22 neighborhood. It's not evenly divided.

23                   Oh, I'm really sorry. I've got a lot more  
24 to go.

25                   CHAIRPERSON MITTEN: Thank you. If you

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1 wanted to submit a written testimony of the things you  
2 didn't get to, the record will be open.

3 Ma'am.

4 MS. BENESH: Yes. My name is Joan Benesh.

5 I've been here before. I have a very short  
6 statement. My name is Joan Benesh and my husband and  
7 I, Bill, live at 4444 Linnean Avenue and in  
8 preparation for this I had to find out how long we've  
9 lived there and it's been like forever. We've been  
10 there 40 years and we adore this neighborhood and feel  
11 very happy that we live here. Both of us are very  
12 strong supporters of the original tree and slope and  
13 we hope that it will pass as it was written.

14 The tree and slope was never intended to  
15 set up neighbor against neighbor. I really was sort  
16 of disturbed today about hearing that kind of personal  
17 attacks on people and what their motives were. I  
18 think everybody who is associated with it really was  
19 looking for quality of life for the integrity of the  
20 city.

21 I think that everybody who worked on this  
22 project really cared about it. They respected the  
23 people. I have gone to so many meetings about this.  
24 I don't understand all the secrecy and I don't have  
25 any special way to get in anywhere but I have attended

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1 ANC meetings.

2 I've been at meetings, so many meetings  
3 about this so I have never felt any secrecy about  
4 anything that is done behind the scenes. All I would  
5 like to say is from an environmental point of view and  
6 for my love of the city for today and for the future I  
7 do hope that you will support the original tree and  
8 slope.

9 CHAIRPERSON MITTEN: Thank you, Ms.  
10 Benesh. Then Mr. Casserly.

11 MR. CASSERLY: Hello. My name is Jim  
12 Casserly. I live at 2839 Allendale Place within the  
13 overlay district. I want to thank you all. I'm just  
14 amazed that you are all not just here but attentive at  
15 this hour. I'll try to be brief but my hat is off to  
16 you.

17 I have to say that I've been pretty  
18 impressed by this. I'm not an activist. You alluded,  
19 Commissioner Hood, to activists. I'm not an activist.  
20 I've never spoken or testified before. I have  
21 followed this with great interest as someone who has  
22 lived in Forest Hills for three years but admired the  
23 neighborhood for 25 years for its special quality.

24 I've been immensely impressed by the  
25 process that led to the adoption of the tree and slope

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1 overlay. It was transparent. It was inclusive. It  
2 was thoughtful. It was thorough. That includes the  
3 Forest Hills Citizens Association meetings, the ANC  
4 meetings, the meetings in which I think three of you  
5 were here for at some length and equally late hours.

6 I was delighted when it was set down. I  
7 was truly distressed, to be honest, when I heard the  
8 Office of Planning's proposal which the more I heard  
9 about it, the more it seemed to me that it didn't  
10 address the considerations that we were trying to  
11 address here. It doesn't really address the  
12 impervious surface issues.

13 It doesn't address the adequate root  
14 space. Commission Parsons, you drilled down on the  
15 problem of the subjectivity of the arborists and the  
16 inherent unpredictability of some of these things. I  
17 know that the opponents here, I guess the proponents  
18 of the Office of Planning, I have listened to them  
19 very carefully.

20 They speak repeatedly of their commitment  
21 to retaining the character of the neighborhood. They  
22 keep emphasizing their commitment to protecting trees,  
23 maintaining the tree canopy, but 25 percent does not  
24 equal 55 percent. 25 percent does not equal 45  
25 percent or 35 percent.

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1           In one sense 25 percent doesn't equal 25  
2 percent because even if we only had a 25 percent tree  
3 canopy, that is one thing that is very different from  
4 a projected tree canopy in ten years after you have  
5 cut down all the mature trees.           Ten       years  
6 from now you could get an arborist to predict that you  
7 will be back where you were. I guess my final point,  
8 if I might, there's one word that we heard more than  
9 any other tonight and that's the word compromise.

10           I think almost without exception the  
11 proponents of the Planning Office said they could  
12 accept this compromise. This is not a compromise in  
13 my view. It's capitulation. It's a reversal of what  
14 people here, not me, but these other folks have worked  
15 so hard to achieve. I beg you not to take it away.

16           CHAIRPERSON MITTEN: Thank you. Questions  
17 for this panel? Any questions? Thank you all.

18           Now we'll have Mr. Swanson if he's here.  
19 We'll have Martin O'Hara and Mary O'Hara and anyone  
20 else besides the folks on the ANC who would like to  
21 testify in opposition. Anyone else?

22           Mr. Swanson, you can go ahead whenever  
23 you're ready.

24           MR. SWANSON: Thank you very much, Madam  
25 Chair. My name is Dave Swanson and I have lived at

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1 our home in Forest Hills for 25 years. We've raised  
2 both our kids there. We didn't know how nice it was  
3 until we got there and actually bought the house  
4 because we came up a street that actually didn't have  
5 as many trees as we came to appreciate. It's been a  
6 wonderful place to live. Wonderful people that we've  
7 associated with and we have taken on an obligation, we  
8 think, to pass on what we have enjoyed to everybody  
9 who may come after us.

10 This has been a very interesting process  
11 for me because I've worked in many, many different  
12 levels of Government. I'm a physicist and I am sort  
13 of out of my character in many respects in working in  
14 Government. The decision you have to make here are  
15 classic for a Zoning Commission.

16 In 25 years we have seen that the  
17 development pressures are real in our neighborhood.  
18 They are big lots. They would be perfect for  
19 subdividing. We have seen a lot of homes that have  
20 been over-built on lots. Some of the opposition have  
21 done that. I understand why they oppose.

22 But also, at the same time, property  
23 owner's rights are real. Lots of people have bought  
24 homes or property in Forest Hills in the last 15 years  
25 and they have expectations on their mind. They like

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1 to do things with that property. This is the classic  
2 zoning challenge. I think that the Office of Planning  
3 has done a terrific job in getting in the middle of  
4 this as a Government agency.

5 The Forest Hills Citizens Association, I  
6 think, has done a great job getting in the middle of  
7 this as a neighborhood association. Different  
8 practices, different rules go with the way each of  
9 those organizations do their thing. But I think what  
10 both have come up with is that tree protection is what  
11 we want and how we do it is complicated. I  
12 think what Jim Urban said was terrific. It shed a  
13 whole new dimension on what canopy protection  
14 strategies really have to be.

15 On the other hand, I personally think the  
16 template strategy in the original TSO is a very  
17 effective way to achieve the same objectives. It is,  
18 I think, less burdensome from a regulatory point of  
19 view.

20 Most people don't agree with that but I  
21 want to say at the end here that the most important  
22 thing is if you want to preserve trees, you've got to  
23 make sure that whatever regulations are out there are  
24 very specific and clear, No. 1, and, No. 2, they have  
25 to be backed up by penalties because developers will

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1 buy their way out of any development strategy they  
2 think they can get away with.

3 We have seen that. We have seen places  
4 where clearly homes have been over-built on property  
5 and the suggest of your effort and of our effort  
6 really is tied to that final penalty strategy.

7 CHAIRPERSON MITTEN: Thank you, Mr.  
8 Swanson. Mr. O'Hara.

9 MR. O'HARA: Thank you, Madam Chairman. I  
10 am here to speak on behalf of myself and my wife. We  
11 live at 3005 Albemarle Street for the last 10 years  
12 and I want to just state that I strongly support the  
13 current tree and slope overlay and oppose this so-  
14 called compromise. I don't see it as a compromise as  
15 the previous speaker has said.

16 I see this as doing away with the  
17 preservation of the trees in Forest Hills which is  
18 what we really want and not this proposal which is a  
19 sanctioning of a reduction in the coverage of the area  
20 with trees. Again, I want to reiterate what has been  
21 said by previous speakers that we are not strongly  
22 divided on this.

23 We have a minority who are very agitated  
24 who have brought about this process which is proposed  
25 to undue the tree and slope overlay. The large

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1 majority of the people in the neighborhood want this  
2 and I'm here to speak up on their behalf. Thank you  
3 for listening.

4 CHAIRPERSON MITTEN: Thank you. Any  
5 questions for these gentlemen? Thank you both.

6 MR. SWANSON: I probably should have  
7 disclosed that I'm the treasurer of the Forest Hills  
8 Citizens Association. If I'm not legally allowed to  
9 do what I'm doing, I don't know what I'm going to do  
10 with all the money we have.

11 CHAIRPERSON MITTEN: Okay. Now we're  
12 ready for the ANC. Mr. Bardin, if you keep us late,  
13 all these people are going to be mad at you. Let that  
14 guide you.

15 MR. BARDIN: I'm guided. Madam Chair, I'm  
16 accompanied by the Secretary of the Commission,  
17 Commissioner Cathy Wiss who testified before you as an  
18 individual commissioner in this docket. I'm David  
19 Bardin, the Vice Chair of the Commission.

20 As you know, our oath of office is to vote  
21 for what is in the best interest of the District of  
22 Columbia as a whole and I hope in some small way we  
23 can help you do your job of bringing this docket to  
24 its best conclusion that you can come to.

25 I have just given Mr. Bastida and he is

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1 distributing two sides of a page, a list of 16 items  
2 that we have either issues or positions on. I think  
3 we can go through them pretty quickly because a lot of  
4 them have been covered.

5 The first issue is whether you should  
6 approve finally an overlay for Forest Hills which goes  
7 beyond the city wide provision of the Urban Forestry  
8 Protection Act. I think there is no discussion  
9 anymore. Everybody you've heard from says yes and we  
10 agree yes.

11 We do note the question that was raised by  
12 the Zoning Commission I think has influenced the  
13 Office of Planning a great deal, the sense that you  
14 are looking for some kind of new template, a new model  
15 which could be applied city wide. Our advice to you  
16 is not to try that. Not to try that.

17 I mean, just take one thing, heat island.  
18 There's a 10-degree fahrenheit temperature  
19 difference, at least this time a year, between where  
20 we are sitting now and Forest Hills as well as several  
21 other parts of the city. Don't assume you can come up  
22 with one tree overlay that's right for the city as a  
23 whole. Our advice is finishing this one.

24 The second point we go to is what will be  
25 the stated goals of the overlay. We've quoted out for

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1 you the three stated goals that appear in the overlay  
2 that you sat down for Forest Hills which are based on  
3 the template overlay that your predecessor sat in 1992  
4 and applied to Normanstone Drive.

5 And then in 1999 again your predecessors,  
6 except Mr. Parsons, was here for all three times, sat  
7 for a portion of Palisades. We stress that amongst  
8 other things they mention mature trees which does not  
9 appear in the proposed alternative by the Office of  
10 Planning.

11 We think that is a mistake to take them  
12 out. And preventing significant adverse impact on  
13 adjacent open space, park land, stream bed, or other  
14 environmentally sensitive areas. That was part of the  
15 basic concept of tree and slope overlays. That would  
16 be taken out by the alternative proposal.

17 We think that would be a mistake. We  
18 recommend against changing it. Now, there may be  
19 other changes you want to make. We just say of the  
20 two choices the traditional template goals are more  
21 desirable than the proposed goals given to you by the  
22 Office of Planning.

23 I'll ask Commissioner Wiss at this point  
24 taking from that to go into some specifics and then  
25 I'll come up with other points.

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1 MS. WISS: Thank you. Commissioner Cathy  
2 Wiss, ANC-3F-06. The Forest Hills forest is special.  
3 Very tall trees give Forest Hills its unique  
4 ambience. Many of these trees like White Oaks,  
5 Beeches, and Tulip Poplars are quite slow growing but  
6 can live for hundreds of years. Many are relics of  
7 the Piedmont Forest that once covered this area but has  
8 now disappeared from most of the District of Columbia.

9 These majestic trees are worth saving.  
10 These trees are not like canopy trees in other  
11 neighborhoods, at least my neighborhood. In my  
12 neighborhood of Tentley Town the wild trees, those  
13 that seeded in on their own and have persisted through  
14 reseeding, are the types that one would find at hedge  
15 rows between cultivated fields, Black Locust, Wild  
16 Cherry, Bulberry, Silver Maple, Catalpa.

17 Indeed, Tentley Town was farmed  
18 intensively throughout the 19th and early 20th  
19 Century. The only places one can find species similar  
20 to those at Forest Hills is in areas where Soapstone  
21 Creek flowed before it was diverted to sewers and this  
22 was the subject of a case in my neighborhood a few  
23 years ago where we had a wonderful White Oak that was  
24 preserved.

25 Presumably the stream banks were not

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1 cleared for cultivation. Many species of trees in  
2 Forest Hills are similar to tree species in adjacent  
3 Rock Creek Park.

4 My constituent Gail Spilsbury recently  
5 published a book entitled "Rock Creek Park" which list  
6 several types of forest in the park and gives a map of  
7 their locations prepared by Sue Salmons, Rock Creek  
8 Park's Resource Management Specialist for Vegetation  
9 Management in Natural Areas. The similarities between  
10 trees in the park and in Forest Hills are obvious. I  
11 have appended Ms. Spilsbury's list of park flora and  
12 the map at Attachment A to my testimony.

13 The overlay as set down sought to protect  
14 adjacent park land. If the similarity between Forest  
15 Hills and Rock Creek Park is maintained, the overlay  
16 will do just that. Forest Hills will remain a  
17 suitable and complimentary buffer for the park.

18 Trees seeding into the park from Forest  
19 Hills will be compatible with the Rock Creek Park  
20 forest. The canopy in both areas will remain similar  
21 in height and value for wildlife thereby extending the  
22 habitat for birds and other creatures.

23 On the other hand, if trees that are  
24 foreign to the park are planted in Forest Hills and  
25 seed into it, the park's forest will change over time.

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1 This has happened in some places. Sue Salmons has  
2 developed a list of trees she asked park neighbors not  
3 to plant. This list includes Norway Maples.

4 We planted street trees during the Barry  
5 Administration including in front of my house but now  
6 are removed from the list because they are extremely  
7 invasive. Chinese Elms are also on that list now but  
8 on the street tree list but they are also on Sue  
9 Salmons' list of trees not to plant near the park. I  
10 have attached her list at Attachment A.

11 Section 1406.(A)(5) of the D.C.  
12 comprehensive plan provides in part the development of  
13 border areas to Rock Creek Park and its tributaries  
14 must avoid any adverse affect on the valley parks  
15 including the water quality, flora, and fona.

16 Using the UFA list of street trees  
17 developed for a wholly different purpose as a guide  
18 for replanting Forest Hills could have a devastating  
19 affect on Rock Creek Park. The list contains many  
20 trees not indigenous to the Washington area, let alone  
21 to the United States. The list does not include trees  
22 found in Forest Hills and Rock Creek Park like Beech  
23 trees which may not be suitable to plant by the street  
24 but which would be desirable to preserve and plant in  
25 people's yards.

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1           Mr. Caldwell mentioned that they sucker.  
2 I know a wonderful grove of Beeches that have done  
3 just that in a property near where my parents live.  
4 That is something that I think for a yard is  
5 appropriate but not in a tree box.

6           The list includes only one evergreen, Dawn  
7 Redwood, a pretty tree with sparse canopy not  
8 indigenous to this area. The list excludes hollies,  
9 pines, and spruces, trees found in many yards in  
10 Forest Hills and obviously favored by people.

11          Would residents not be able to plant these as  
12 canopy replacement trees?

13          Having a replacement tree list is a good  
14 thing but it should be tailored to maintaining an  
15 appropriate mix of trees for Forest Hills and Rock  
16 Creek Park. The New York City zoning ordinance I  
17 submitted for this case on September 22, 2002, does  
18 just that. It gives a list of plants for replanting  
19 in natural area zones in order to maintain or  
20 reestablish the indigenous plant community.

21          Finally, requiring a percentage of canopy  
22 coverage within 10 years of construction could  
23 encourage homeowners to plant only those trees that  
24 grow quickly and other trees that grow slowly but may  
25 provide greater benefit over time. Care should be

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1 taken to devise a scheme that will allow homeowners to  
2 enjoy the benefits of some canopy now but also to  
3 provide for the best forest in the future. Thank you.

4 MR. BARDIN: Madam Chair, let me continue  
5 with --

6 CHAIRPERSON MITTEN: Would you turn your  
7 mike back on for me?

8 MR. BARDIN: Sorry. Madam Chair, let me  
9 continue with our list pointing out that we have tried  
10 to cross-reference to the 10-page memo that we filed  
11 with you yesterday to get more information and I'll  
12 try to describe the chart at the end of that in  
13 relation to these issues.

14 We're talking about provisions which are  
15 called trees provisions. Frankly, we strongly object  
16 to that. We think what has been called trees  
17 provisions are paragraphs and subparagraphs that have  
18 the word tree in them.

19 There are other paragraphs and  
20 subparagraphs that don't have the word tree but really  
21 very important to the habitat and survival of trees  
22 but taking that nomenclature should a Forest Hills  
23 overlay focus on tree preservation or tree planting or  
24 both, the traditional Zoning Commission overlay  
25 focuses on preservation.

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1           The new proposal really focuses more on  
2     planting because it would try to force people who have  
3     very few or no trees on their properties to plant up  
4     at the time of development and would give people who  
5     have trees, as explained to you, the right to denude  
6     but then replant.     The approach that we would  
7     recommend, we are looking for something in between.

8           I'm not going to tell you which is our  
9     high priority and which is our lowest priority and  
10    which is our flexible but we are looking for an  
11    approach where the emphasis is on preservation and we  
12    suggest to you that in the context of mitigating for  
13    special exceptions that replanting be a source of  
14    mitigation.

15           This is one example that we presented to  
16    you months ago, I must say, and Office of Planning had  
17    no objection to it then but you guys, forgive me,  
18    rejected it after Commissioner Parsons says, "You  
19    don't need to spell out what they can do in mitigation  
20    because the discretion is always there."     I think  
21    maybe you should reconsider spelling something out.

22           The ANC supports OP's tree protection plan  
23    proposal which is a big step forward.     However you  
24    resolve the other issues we think you should pick it  
25    up and we spell out more in our written memorandum why

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1 we support it, why it would bring at least the Forest  
2 Hills neighborhood of D.C. up in line with the best  
3 practices of our suburban neighbors.

4 Item 4, "Should a Forest Hills overlay  
5 focus on protecting large, mature trees at all?" The  
6 ANC says yes. The template, the traditional  
7 provisions, have a great deal on that score. The  
8 Office of Planning just throws out any specific  
9 provision. Our stress, as I'll explain, is on the  
10 largest of the mature trees but there are several  
11 different ways of doing it.

12 Five, how may canopy be used in a Forest  
13 Hills overlay? We now see three different ways. I  
14 want to address this a little bit. We suggest as a  
15 mechanism and I'm thinking of large lots that I have  
16 visited. The largest lot in our ANC and smaller  
17 17,000 square foot lot co-owned by one of the earlier  
18 witnesses today where there are lots and lots of  
19 trees.

20 It doesn't seem to me to make sense to  
21 have to go around measuring the trunk caliber of each  
22 one of, in some cases, hundreds of trees. I was  
23 unaware and I'm disturbed by what Mr. Caldwell said  
24 and I just want to talk with him some more. I hope  
25 you and the Office of Planning do because I got the

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1 picture from him that they would do the canopy by  
2 taking a tape at each trunk and go around.

3 I had assumed that there is some  
4 technology where a lot -- well, take the largest lot  
5 in our neighborhood. According to Office of Planning,  
6 and I'm not going to argue about the numbers here,  
7 they came up with 74 percent canopy. Let's say you  
8 set a standard, a goal, and we are suggesting maybe it  
9 should be an option that the landowner can use if he  
10 wants to or can go tree by tree if he wants to. Say  
11 you set a goal of 60 percent.

12 That would let this landowner who, it  
13 seems to me if the 74 percent is accurate, it's  
14 clearly way above the 60, manage the forest on this  
15 landowner's land and make the decisions about when to  
16 cut a tree, when to replant without having to go  
17 through any kind of fuss or minimal fuss. Maybe just  
18 a certification that he's done it. To me there's a  
19 great attraction in trying to do that and I would urge  
20 you to try to find a way in which that's possible.

21 Now, take the 17,000 square foot lot.  
22 This one happens to have a lot of trees way in back  
23 where we are proposing they not be able to subdivide  
24 it into two lots. There is an area in front near the  
25 street. This happens to be an empty lot now where if

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1 they would want to build, they would want to build  
2 near the street. What I heard was that the side yard  
3 provisions and certain front yard provisions could  
4 hamper their flexibility, or their buyer's  
5 flexibility, to develop that lot when it comes up.

6 It seems to me that a canopy approach,  
7 which gives weight to the fact there's an awful lot of  
8 trees in back, has a lot of attraction and if you can  
9 figure out some way of putting it in, what I don't  
10 understand frankly, and this is where you are going to  
11 need the Ainsley Caldwells of the world and the Jim  
12 Urbans to figure out, is how do you do it? I had just  
13 assumed it was going to be done with an aerial  
14 photograph and apparently I'm not right on the ball so  
15 I won't take anymore of your time on that score.

16 Now, a second way of using canopy is the  
17 way the Office of Planning suggests, as a uniform  
18 standard minimum across the board for every single  
19 lot, or maybe two standards, one for small lots and  
20 one for large. That seems to us questionable.

21 The more we hear about it there's all  
22 kinds of controversies like what does American Forest  
23 really mean. We didn't know that they were going to  
24 -- I don't know what their position -- this issue on  
25 their position.

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1 But when I read Office of Planning's  
2 description of their position, it seemed to be the  
3 American Forest said, "Our goal for D.C. ought to be  
4 every residential neighborhood 25 percent canopy  
5 because we're not like the suburbs which have a goal  
6 of 50 percent like McLean, Virginia.

7 Now, why is Forest Hills like Georgetown?

8 I mean, you all know neighborhoods which are heavily  
9 treed and neighborhoods which have almost no trees.  
10 Why should we have the same goal? Particularly if you  
11 really think you're doing a model for the city as a  
12 whole, then you as a Zoning Commission should probably  
13 have some notion of what your goal is for the city as  
14 a whole.

15 We have in our report the example of  
16 wetlands preservation which is way off. It's not the  
17 issue today but we have a national goal of no net  
18 loss. Casey Trees is proposing to you you have a more  
19 ambitious goal for D.C., some kind of net gain, and  
20 Forest Hills is one of the reservoirs of existing  
21 trees where you would want to preserve a lot of trees.

22 A third possible use of canopy is as a  
23 characteristic of the particular lot. Take that large  
24 lot. If it really has 74 percent canopy and you're  
25 going to let them take it down by X percent or down to

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1 something, you know, different ways of doing it, you  
2 could say, "I'm going to look at the canopy of that  
3 lot."

4 Then the lot which really is six percent  
5 canopy -- and there probably are lots. Maybe not  
6 squares but lots with 6 percent canopy and probably  
7 lots with zero -- you would have a different rule.  
8 We're talking about what you can do as of right  
9 without going through any extra process. You might  
10 allow anybody to take down the canopy as of right by  
11 10 percent. Or if you think that's too tight, you  
12 could have another standard to the extent you can use  
13 canopy.

14 All right. Now, this chart I mentioned,  
15 this is one of the charts that Office of Planning gave  
16 us of their analysis. What we've done here is resort  
17 the Excel spreadsheet in terms of percentage, coverage  
18 percentage from low to high. Their low is 2.5 percent  
19 and their high is 93.4 percent. The 93.4 percent has  
20 a little bit of Government-owned land but it's mostly  
21 not Government-owned land. It's almost all not  
22 Government owned land.

23 There are comments which will tell you  
24 which are Government-owned land, which are  
25 institutional land. You can sort if different ways

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1 but what you'll see is there is a tremendous range of  
2 coverage and it's not just a few outliers but there  
3 are a lot in the 20s, a lot in the 30s, a lot in the  
4 40s and 50 percent.

5 The notion of having one standard uniform  
6 for all of Forest Hills seems questionable  
7 particularly since the lots will presumably have an  
8 even wider range. However, there's a lot of meat here  
9 that you might want to think about and consider.

10 Point 6. Should permits be allowed for  
11 building on a lot after removing template, protected  
12 trees, or clear cutting? The issue has been explained  
13 to you already.

14 In our judgment, the template provision,  
15 the 7-year provision, after I buy the lot that your  
16 state sells after you die or you sell after you move  
17 out of D.C., the notion that I would buy it, clear cut  
18 it and then wait seven years seems to me a little far  
19 fetched but it could happen.

20 And the OP provision where I can buy it,  
21 cut all the trees, get an arborist to come up with a  
22 plan based on fast-growing trees which in 10 years  
23 would give you 25 percent or 32 percent or whatever  
24 the thing is, just doesn't seem to be as strong a  
25 provision.

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1           Item 7.    To the extent a Forest Hill  
2 overlay incorporates a tree-by-tree approach related  
3 to tree circumference and numbers of trees, should it  
4 require a special exception to cut.   Then there are  
5 four categories based on the template which is now in  
6 effect.   Any tree of 75 inches or greater.   That's a  
7 really big tree and the ANC says yes and that gives a  
8 high priority to giving that protection.

9           You can't cut more than three trees as of  
10 right in the 38 to 75 inches in the entire lot.   We  
11 haven't taken a specific position on it.   Maybe you  
12 want to say that and maybe not.   Any tree of 38 to 75  
13 inches in the front most portion of a lot, there is a  
14 special, some people would say, peculiar provision in  
15 the template in all three overlays that gives extra  
16 special protection to trees up in front as compared to  
17 the sides and back.   Our advice to you is lowest  
18 priority.

19           Fourth, the most general provision in the  
20 template is if you want to cut anymore than 25 percent  
21 of the circumference inches of all trees greater than  
22 12 inches, and that's where you see where you get into  
23 a very complicated, I think, measuring issue if you  
24 have a large lot with large numbers of trees such as  
25 the two I illustrated and I can give you others which

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1 I have personally visited and looked at.

2 Now the nontree provisions. First,  
3 impervious surface. The template sets a 50 percent  
4 limit. That is what this Commission set in 1992 in  
5 its template and applied in Normanstone. That is what  
6 this Commission again set in 1999 and applied in the  
7 Palisades Chain Bridge Road. That has got to be part  
8 of what the D.C. council approved as part of the Ward  
9 3 element which I thought was supposed to guide this  
10 Commission when they said, "We want a tree and slope  
11 overlay for Forest Hills."

12 In any event, the ANC recommends that you  
13 adhere to the impervious surface restriction. The ANC  
14 regards it as a tree preservation provision that trees  
15 can't survive without oxygen and water getting down to  
16 their roots and that takes impervious surface.  
17 Somebody said, "Look at Connecticut Avenue."

18 Some of Connecticut Avenue has huge lawns  
19 in the private sector and huge tree boxes. Wide ones,  
20 long ones. There are some other parts like when you  
21 go to the Van Ness area, we have a lot of concrete and  
22 you won't find many trees there and you will find the  
23 trees are pretty small. I didn't understand that  
24 argument.

25 In any event, we give the highest priority

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1 to the impervious service provision. This is not a  
2 development standard. Sure it has surface water  
3 implications. As much as I admire and respect the  
4 spokesman for the Office of Planning and the wonderful  
5 job she's doing, I can't agree with her remarks about  
6 the Department of Health. They are not stepping into  
7 it.

8 If you rely on something that may happen  
9 some day with reorganization, legislation or whatnot  
10 and the Department of Health to deal with impervious  
11 surface, you will be making a serious mistake and,  
12 frankly, I can't imagine how a significant tree  
13 protection overlay for Forest Hills can dump the  
14 impervious surface restrictions.

15 Item 9, the building area lot coverage.  
16 That's also in the original template. A variant with  
17 a sliding scale was put into Chain Bridge Road. It's  
18 in the thing that was set down. We didn't say  
19 anything specifically about that. In our judgment the  
20 impervious surface is the most important.

21 The building footprint is probably not as  
22 important. The contentions by architect Mark Baughman  
23 who has testified before you today but he spelled it  
24 out more in earlier testimony in this docket was that  
25 will tend to get for higher buildings.

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1           There's a lot of balancing there. I can't  
2 add much to the record on that. We're not going to  
3 object if you retain them, you understand. This is  
4 not the lowest priority but it's not the highest by  
5 any means.

6           I should say the success of what you do  
7 depends on the blend, on the mix, the mixing and  
8 matching.

9           Item 10. Should a Forest Hills overlay  
10 address minimum size of lots? If yes, what kind of  
11 provisions? The ANC supports 9,500 square feet. We  
12 originally supported the original proposal for 12,000  
13 square feet as compared for the R-1-A underlying  
14 zoning of 7,500.

15           You, the Commission, made a decision to  
16 knock that down to 9,500 which is the same as in the  
17 Chain Bridge Road Palisades area. We are supporting  
18 that. We are asking you to consider whether this  
19 can't be a different mechanism.

20           The mechanism now is tied to building  
21 permits. It seems to us that it might be possible  
22 simply for the Zoning Commission to direct the Office  
23 of the Surveyor not to cut one lot into two lots which  
24 are smaller than 9,500 each. I have to digress to say  
25 to the layman subdivision means taking something big

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1 and subdividing it into two small. But to the zoning  
2 specialist, in the District of Columbia, at least, it  
3 also includes taking two lots and combining them into  
4 one. That is the way the word subdivision or  
5 subdivide is used.

6 Now, we have no quarrel with any property  
7 owner who wants to take two lots and combine them into  
8 two, reach the 7,500 thereby and build on them in  
9 accordance with the underlying zoning. We have no  
10 quarrel with the present owner of a 7,500 square foot  
11 lot who wants to continue being governed by the  
12 underlying zoning standard for it even if the house is  
13 destroyed completely and replaced.

14 Our suggestion, though, is that when big  
15 lots are cut up into small, the Office of Planning's  
16 analysis shows you that you tend to get more trees  
17 with bigger lots. That stands to reason. We tried to  
18 do this in the table in back just classifying the lots  
19 as ABCs in terms of size categories. If you look very  
20 carefully at their maps, you see that beautiful green  
21 map.

22 The intensity of the green shows you the  
23 squares where the most canopy according to their  
24 measurements. They have another one which is sort of  
25 buried down there but it's absolutely beautiful. I

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1 hope they give it to you to keep so you can look at it  
2 in your own conference room. By intensity of the  
3 brownish color it has to do with the size of the lots.

4 The ones which are most intensely colored,  
5 those squares had the largest lot sizes. They are  
6 actually showing you the lots. Then as it gets to  
7 lighter and lighter browns they are smaller ones. You  
8 can compare the two and you will just see that's what  
9 happens. Somebody owns a large lot. He has more room  
10 for trees to preserve them. He buys a ready-made  
11 house with trees or when he builds, either way.

12 The Office of Planning suggested to you  
13 that you don't have to worry about the very large lots  
14 being cut up into small because there are other  
15 things. It will come up in a PUD. It will come up in  
16 large lots. I could spend an hour on that but it's  
17 irrelevant.

18 All they actually claim if you read  
19 carefully is that there is oversight but they don't  
20 say there's any power. If you had a PUD before you or  
21 any Government agency, Office of Planning, BZA,  
22 anybody, we're looking at a very large lot. It was  
23 going to be cut into pieces in a big context. The  
24 only ground rule was 7,500 square feet per buildable  
25 lot.

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1           What discretion would you have to say to  
2           them, "I don't care. I want it to be more than that."

3           If they want to make you a proffer of more, that's  
4           fine but they will be doing you a big favor and you  
5           know how that works much better than I do.

6           In any event, we do put high store on the  
7           9,500 square feet. We believe that is a compromise  
8           from the 12,000. Frankly, the testimony that  
9           Commissioner Wiss gave you -- what was it, a year ago?

10          Two years ago? Two years ago now -- New York City has  
11          a whole category of 20,000 square foot lots in  
12          environmentally sensitive area. Progressive Richmond  
13          has 20,000 or maybe more. The city not only doesn't  
14          meet it's own suburbs, it doesn't meet other very  
15          intensively urbanized areas.

16          Item 11. Should a Forest Hill Overlay  
17          widen minimum slide yards? ANC's comment on that, low  
18          priority. That's not in the template, the original  
19          1992. It's not in Chain Bridge Road. It's only here.

20          If you do most of the other things we're talking  
21          about, you could drop that. In fact, we have an  
22          illustrative example at the very end of our statement  
23          of one mix and match which might do that including  
24          dropping the side yard provision.

25          Should a Forest Hill Overlay address the

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1 front yard setback? Now, this is the physical setback  
2 of the house, not the extra trees. It's a very low  
3 priority on those extra tree protections up front as  
4 compared to side and back.

5 The Forest Hills Overlay as now set down  
6 says that the development of the new house should not  
7 be further forward from the average of all the  
8 existing houses at the time of the building permit  
9 application for that side of the street of that block.

10 The tree connection is, yes, it makes more room for  
11 trees.

12 The politics is from the very first  
13 meeting I attended that was a very, very popular  
14 proposal. Walking through the neighborhood and  
15 talking to Commission Maudlin's constituents and the  
16 constituents of people to the south but particular in  
17 the north, my constituents. It's a popular idea. We  
18 do suggest in our latest variant that if the block  
19 doesn't have as many as three houses to average,  
20 perhaps you should drop it.

21 Our experience sadly is that we have some  
22 streets which have a cul-de-sac at the end and  
23 probably we should have proposed that there should be  
24 one straight side of the street and the other straight  
25 side of the street, but a third side called the cul-

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1 de-sac because that would probably make it a lot  
2 easier for the Zoning Administrator and DCRA to figure  
3 out what's the average. They seem to have a little  
4 trouble. In any event, we are not dropping it. We  
5 say yes.

6 On steep slopes there are two ways of  
7 handling it. You adopt it in the set-down as kind of  
8 self-certification of best practices. Office of  
9 Planning suggest pushing it into the special  
10 exceptions provision. We're flexible. That's done.

11 Special exceptions. We discussed it a  
12 little. We think that Office of Planning has done  
13 good work in the rewrite of the special exceptions  
14 provision assuming some of the other critical things  
15 are done. I must say that if they prevail on their  
16 advice to you on impervious surface and don't protect  
17 it, then their special exception provision is this  
18 whole business of whether you can have the roots and  
19 all that, it doesn't make sense because if I pave over  
20 my whole lot, of course there won't be any room for  
21 the roots to grow and then I'll get a special  
22 exemption to everything.

23 You can't really come to grips with the  
24 special exception provisions very well until you know  
25 what you're doing with the other things. We do think

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1 they introduced a number of elements there I won't  
2 take your time on that are beneficial. I should say  
3 as we have said in our statement we think they've got  
4 some excellent proposals. Even when we disagree with  
5 them, they would advance the ball. We are ahead  
6 intellectually, emotionally, politically of where we  
7 were before.

8 Two more things. Transparency of  
9 procedures before the Zoning Administrator in DCRA  
10 were asking you to write into this regulation  
11 requirements that the people, ANC commissioners,  
12 individual neighbors, citizens who care about it can  
13 see what's on file, can make a copy. We've had a lot  
14 of problems, as some of you probably know, so we have  
15 made a suggestion write it in here and I'm sure you  
16 can figure out how to do that.

17 And, finally, there are three lots that we  
18 testified about before. Two of them are R-5-D lots  
19 south of Soapstone Valley buried R-1-A squares. We  
20 believe in one way or the other the overlay should  
21 apply to them. It depends on exactly how you write  
22 the overlay how it should apply.

23 Then there's one hybrid lot which is 80  
24 percent R-1-A and 20 percent R-5-D. I want to clarify  
25 that the entire lot will be subject to the overlay.

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1 The Office of Planning has really not addressed that  
2 in their proposal and we think wisely so because  
3 you've got major issues to deal with first and once  
4 you've made a deal with those major issues, we can  
5 probably come back to you, we come back to them, and  
6 suggest to use some mechanical way of resolving it.

7 Thank you for your time and I'm sorry I  
8 didn't use my two hours, Madam Chair.

9 CHAIRPERSON MITTEN: I'm not. Okay. Any  
10 questions for Mr. Bardin or Ms. Wiss? Any questions?  
11 See, you were so thorough we have no questions.

12 MR. BARDIN: We try our best. Now you're  
13 going to have to be thorough. We very much appreciate  
14 the time and the attention you have given to all of  
15 the witnesses today.

16 CHAIRPERSON MITTEN: Thank you. Stole my  
17 thunder there. That's exactly what I would like to  
18 say. There's been an awful lot of hard work that has  
19 gone into this and you all have endured many more  
20 hours of meetings than we have. I don't think there's  
21 anything left to discuss. It's just for us to  
22 determine what the best approach is at this point.

23 Mr. Bastida, I just want to leave the  
24 record open for a couple of weeks in case people want  
25 to supplement their statements or respond to anything

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1 that they've heard. Can you give us a date?

2 MR. BASTIDA: I was going to suggest  
3 Thursday, August 19.

4 CHAIRPERSON MITTEN: Okay. For anyone who  
5 wants to submit any additional information Thursday,  
6 August 19, at 3:00.

7 MR. BASTIDA: Right. And we have also --  
8 we need the PowerPoint presentation from the Office of  
9 Planning and Mr. Clark was supposed to submit certain  
10 information.

11 CHAIRPERSON MITTEN: Yes. Basically his  
12 PowerPoint presentation without the lines. Okay.

13 MR. BASTIDA: I don't have anything else  
14 written down.

15 CHAIRPERSON MITTEN: Okay. I think that's  
16 all we had. All right. So then we'll have those  
17 submissions on the 19th and then perhaps as early as  
18 our September meeting we would be able to take this up  
19 again in deliberation. You should be aware that  
20 should the Commission propose affirmative action, the  
21 proposed action must be published in the D.C. Register  
22 as a proposed rulemaking. There would be an  
23 additional period of time for comments

24 In addition to that, the proposed  
25 rulemaking will be referred to the National Capital

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1 Planning Commission for federal impact review. Then  
2 the Zoning Commission will take final action at a  
3 public meeting following the receipt of all those  
4 public comments and the NCPC comments after which a  
5 final rulemaking and order will be published.

6 I thank you all again for your  
7 participation in this and your patience with the  
8 process. Office of Planning has done an awful lot of  
9 hard work and you have joined in that and it's  
10 essential to getting through this. Thanks again and  
11 this hearing is adjourned.

12 (Whereupon, at 10:17 p.m. the hearing was  
13 adjourned.)  
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